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Protecting the Appalachian Trail In Maine

University of Maine at Portland - Gorham

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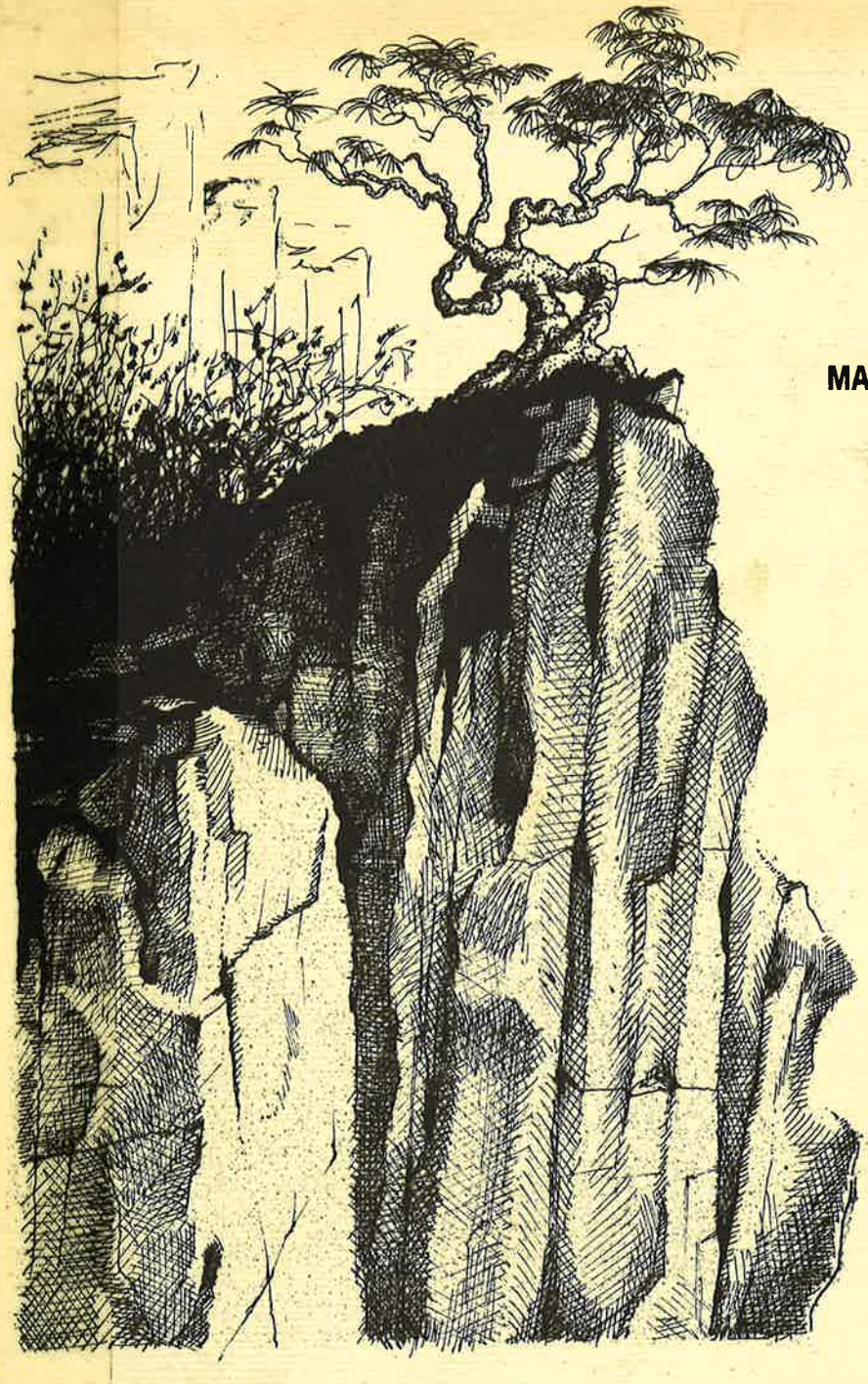

A Study

prepared for the

MAINE APPALACHIAN TRAIL CLUB

by the

ALLAGASH

ENVIRONMENTAL INSTITUTE

Center for

Research & Advanced Study

UNIVERSITY OF MAINE

Portland-Gorham

Directed &

edited by

Patricia Solotaire

1976

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PROTECTING THE APPALACHIAN TRAIL IN MAINE

A HANDBOOK Compiled by

THE ALLAGASH ENVIRONMENTAL INSTITUTE
Center for Research & Advanced Study
University of Maine Portland-Gorham

Directed and Edited by
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1976

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The legal material and sample documents contained herein are intended as general information and background matter only. Nothing herein is intended as specific legal advice. The purpose of including sample documents is for illustration. The reader is cautioned to consult a lawyer in regard to any land transactions contemplated.

INTRODUCTION

The cost of this project to date, including the preparatory research and the publication of this Handbook has been paid for largely out of a grant from the Evelyn H. Murphy Fund of the Appalachian Mountain Club. This Fund was established in 1953 to be used to *"protect existing forests"* in the State of Maine and, during the intervening years it has been used to provide scholarships at the University of Maine School of Forestry, to fund trail maintenance projects in Baxter Park and to support a Forestry Management Practices Conference.

This grant has been made with the expectation that more comprehensive, consistent and appropriate agreements between landowners and the Maine Appalachian Trail Club will be arrived at. It is not intended to simply fund another study.

It is also hoped, however, that this project will produce a greater understanding, by all concerned, of the uses, problems and potential of the Appalachian Trail in Maine and make possible its long term preservation for the enjoyment of many future generations.

* * *

"This project was also conducted partially under the New England Regional Field Service Program sponsored by P.A.C.E. Inc., Cambridge, Massachusetts.

The research forming part of the basis for this publication was conducted pursuant to a contract with the Department of Housing and Urban Development. The substance of such research is dedicated to the public. The author and publisher are solely responsible for the accuracy of statements or interpretations contained herein."

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Illustrations by Tim Bouffard

THE PROJECT ITSELF

The Allagash Environmental Institute at the University of Maine at Portland-Gorham submitted the following proposal to the AMC Murphy Fund as a means of achieving the desired goals, and it was approved following a meeting of the fund officers and members of the Maine Appalachian Trail Club.

The Allagash Environmental Institute, in consultation with the Environmental Law Institute, will undertake a research project, described below, for the Maine Appalachian Trail Club, Inc. and the AMC Murphy Fund. The project started June 15, 1975 and is expected to be completed by November 30, 1975.

The purpose of the project is to collect and interpret information relevant to landowner-Appalachian Trail agreements in Maine and to correlate this information with an inventory of the trail itself so that negotiators would be able to reach agreements with the corporations and individuals owning sections of the Trail that will provide maximum protection for the Trail as well as meeting landowner needs.

The Project has three basic phases, the first two to be carried out simultaneously.

Phase I:

Five students from the University of Maine Portland-Gorham directed by the Project Director and the Work-Study Coordinator will cover the Trail from Baxter Park to the Maine-New Hampshire border, conducting a detailed survey of land-use patterns and natural features relevant to landowner agreements. The survey will include an informal attitude and usage survey of Trail users.

Products:

1) An inventory of the privately-owned sector, including accurate information on Trail location and ownership, expressed on existing topographical maps that can be used in negotiating with landowners.

2) Summary of the user-survey, broken down by ownership patterns, for the same purpose.

Phase II:

The students involved in the Project, directed by the Legal Consultant will undertake research in four areas pertaining to the Trail: 1) Legislative *(Federal, State and Local) - a review of current and pending legislation as it might affect landowner agreements.* 2) Taxation - *study of existing and potential tax laws to see how they might benefit or provide motivation to landowners.* 3) Land Transaction Devices - *a complete review of easements, acquisition, leases, condemnations, etc., relevant to the Appalachian Trail in Maine.* 4) Existing Owner Agreements - *a review of current agreements, their merits and short-comings in terms of Trail protection and Landowner needs.*

The state departments of Parks & Recreation, Forestry, Public Lands, Land Use Regulations Commissions, and Taxation will also be interviewed to determine their existing regulations, future plans and general attitudes towards the MATC. The Maine Coast Heritage Trust and the Nature Conservancy will also be consulted concerning the project.

Products:

1) A set of annotated topographical maps giving data on the Trail that will be useful to negotiators.

2) A body of information, appended with copies of relevant documents, that can be used in reaching effective landowner agreements.

Phase III:

The above legal, legislative and tax information, together with a summary Trail inventory, a description of the Trail inventory process, recommended landowner agreements covering differing situation, a discussion of landowner needs, usage patterns determined by the interviews and specific recommendation for changes in existing Trail Agreements will be edited and compiled into a Handbook, 100 copies of which will be provided to the MATC.

Product: *The above Handbook.*

MAINE APPALACHIAN TRAIL PROJECT - FIELD RESEARCH

The information gathered and checked in the field may be carefully depicted on the blown up maps of the trail sections for use as visual aids in the presentation of the case for signing land use agreements between the MATC and the landowners. Material arranged in this manner in a detailed and standardized form will be a valuable reference tool not only for the present project but also for future use by the MATC and others.

To meet the goals of the field research, the following work should be done by half-mile segments. A half-mile segment of the trail should be a reasonably short distance to cover at one time, yet be long enough to not overburden the field researcher with minute detail. The overriding

concern, of course, is that everything that would be of help to the negotiating teams be included. The positions on the half-mile segments can be quite easily derived from the information contained in the Maine AT Guide, from plotting positions on USGS maps, from careful observations of landmarks and the general terrain crossed, and from good common sense.

The field research will consist of the following:

1. Plotting of each half-mile segment of trail on graph paper. Stopping at the end of every half-mile segment, the field research team will plot the course of the trail using the scale of the graph paper. Detailed field observations may then be added as relevant in order to create a profile of each half-mile segment. Detail to be included will be, but is not limited to, all bodies of water, all significant geological formations, all roads, trails, tote roads, clear-cut areas, blowdown areas, eroded areas, man-made structures of any kind, significant wildlife habitats, utility lines. Also included will be a general description of the type of forest (primarily deciduous, mixed, primarily coniferous, mature or young growth, scrub growth, meadow, burnt area, etc.), and views from any open areas (panorama of summit, good view of a lake or a bog, etc.).

2. A brief narrative of each segment will be written. This is an attempt to describe in more detail what is plotted on each graph-map.

3. Field checking of all previously researched data, particularly the location of property lines and the location of all of man's encroachments of the wilderness in relation to the trail. This will be included in number 1 and 2 as stated above but is listed separately here to underscore the importance of this material.

With the completion of this field research, a fairly complete and accurate natural resources inventory and land use activity summary should be compiled. This information, when standardized, correlated, and rewritten and replotted on the larger maps, should be an invaluable tool in briefing the teams of negotiators about the sections of the trail.

In actual practice, as is usually the case, certain modifications were made in carrying out the proposal. The graph method of recording Trail data, for example, was discarded in favor of working directly on sections of the Interim Zoning maps put out by the state. These maps, cut into clipboard-sized sections, proved to be a reasonable scale to work with.

Perhaps the least successful aspect of the Appalachian Trail project was the User Survey Questionnaire. The original idea was that collecting information on the people hiking the Trail - their demographic characteristics, planned routes and opinions concerning the Trail - might be useful in presenting a clear picture of AT use to the Trail owners.

In actual practice, the researchers, being hikers themselves and not trained interviewers, were hesitant to "interupt" the hiking pace of their fellow travelers, especially during bad weather. Also, since their major concern was the gathering and reporting of environmental data, they often did not have the time to stop and query other hikers. In all, only 38 people were interviewed.

The basic objective of obtaining accurate information on trail use is valid, however, and should be pursued in the future. We would suggest this might be achieved by stationing specially trained people at key shelters for perhaps an entire week at various times of the season and having them interview everyone who stopped at that shelter. This would not cover day-hikers, but would allow for a lengthier questionnaire and more considered responses.

A review of the compilation of the questionnaire (Appendix A) does, despite its drawbacks, provide some insights into Trail use and user characteristics.

A sizeable majority of the responders used the Trail more than twice a year, and group travelers far outnumbered those hiking alone.

The age statistics, showing a heavy concentration of people under 25, may be misleading. The researchers, being young people themselves, felt more at ease approaching hikers in their own age group. A more carefully conducted survey might find a larger percentage of over-25's.

The home-location question showed an almost equal distribution of Maine and out-of-state hikers. A cross-check with the Planned Trip question showed, as might be expected that the Maine hikers were on shorter trips, while the out-of-staters were more likely to be through-hikers.

The response to the question on how the user would characterize the Appalachian Trail in Maine was somewhat surprising. The overwhelming majority considered it semi-wilderness rather than wilderness. Perhaps the sheer presence of trail-blazes and shelters removes the Trail from the "wilderness" category in the minds of its users. This attitude should perhaps be explored more fully.

Thirty-one responders considered the land around the Trail to be **Very Well** or **Well** managed, with only five putting it in the **Fair** category, and none answering **Poorly**. This positive response should be encouraging to the MATC, and an incentive to the landowners to maintain such a high opinion of their stewardship.

There was a significant difference in the responses to the questions on housing and logging and their proximity to the Trail. More people objected to houses being within sight of the Trail than they did logging operations. However, fifteen people thought logging should not be allowed within a quarter mile of the Trail, whereas only nine wanted housing kept at that distance. Perhaps it is the sound of the chain-saw that hikers wished to be protected from.

There was no doubt, however, that AT hikers want the immediate Trail environment to be left in its wilderness state - 36 responders stated this desire, with only one willing to have the land "managed with the rest of the forest."

The companies owning the majority of the AT in Maine should be reassured by the very positive response to the question on using camping stoves rather than open fires. While several answers made reference to the personal preference for open fires, nobody refused to use camp stoves, and 30 were willing to use them even when fire danger was not high.

The questions concerning access and the development of side and alternative trails revealed an interesting duality among trail users - those who wanted more access wished the Trail to be more available to themselves, while those who did not want more access wished to prevent more people from using the Trail. Similarly, people answering that they did not want any more side or alternative trails developed specifically mentioned that they didn't want to encourage any more hikers.

The responses to the requests for suggestions and improvements were few and brief, due to the mid-hike nature of data collection. Most of the comments we did receive mentioned shelters that were in poor condition or were overcrowded at the time the hiker used them.

Information gathered from such a small-scale survey should not be presented as reliable data without confirmation by a wider survey. The questionnaire responses did provide "leads" that should be investigated more fully. Initial negotiations with landowners might bring up information "gaps" that would call for a more intensive investigation into AT use in Maine.

While it was obvious that the Handbook had to be drafted by people familiar with the law and legal research, we found that an experienced cartographer was equally essential to the success of the project.

The cartographer felt that his role in the project was to meet two objectives:

1. Determine property owners, boundary lines and mileage traversed.

2. Suggest adequate areas of protection that would maintain an ideal Trail concept of wilderness, as defined by the Trailspeople.

The information for the first objective was recorded on a series of U.S.G.S. maps (for sample see page). It was gathered through a search of Appalachian Trail records, State Bureau of Taxation maps, state archives and the public records of the towns and plantations through which the AT runs. It represents perhaps the first time since the Trail's inception in Maine that there is a clear picture of who owns what land, how much and where.

To achieve the second objective, the cartographer used the larger scale maps put out by the Land Use Regulation Commission during their interim zoning phase, and evolved a "Zone" plan to indicate the protection needs of the Trail in different areas (for sample, see page). Working from the field reports and maps brought in by the Trail hikers, he established and recorded three basic zones:

ZONE I: Natural Preservation. This corresponds to the Trail Corridor concept, in which the wilderness feeling must remain totally intact. No additional structures, roads, obvious logging operations or other signs of man's activities should be evident in this zone. It was felt, however, that varying terrain conditions made any single-width designation for Zone I impractical. Instead, three possible widths were selected:

-a 200' to 400' width in areas of mature softwood;

-400' to 600' for areas of mixed hardwood and softwood;

-and 600'+ for hardwood areas, meadows, marshes, exposed bedrock or bogs, with these corridors to include a reasonable ecotome.*

The hardwood areas, being composed of deciduous trees, do not offer as much visual protection for the Trail in spring, fall and winter.

ZONE II: Compromise Zone. This zone is primarily an up-slope zone, also of varying widths. It is designed to protect the Trail from soil erosion, tree blowdown and pollution of streams. It would not preclude selective cutting of timber,nor even clear cutting in some sections.

ZONE III: Considerate Development Zone. This is perhaps the most difficult area to identify or maintain. It is determined largely by contour lines, and most frequently comprises the "view" from ridgeline sections of the Trail. The idea is to instill in the minds of the state, and the owners of the land involved that any development - residential, recreational or industrial - should consider the presence of the AT. It is not contemplated that logging operations be curtailed in these zones, but that manmade structures be "built into" the land in such a way that they do not cause a significant disruption of the wilderness character.

Early in the project a project staff member talked with representatives of the departments and bureaus within the state that had any connection with the Appalachian Trail. These included the Bureau of Parks and Recreation, the Bureau of Forestry, the Bureau of Public Lands and the Land Use Regulation Commission, all part of the Department of Conservation. The responsibilities and powers of the agencies, as they relate to the Appalachian Trail, are described in Appendix B.

* interface area between two ecosystems, i.e., a bog bordered by softwood growth should be "zoned" to include a strip of softwood at the edge of the bog.

The Bureau of Parks and Recreation* made clear their interest in and support of the Appalachian Trail system. They stressed the volunteer aspects of Trail management, the excellent upkeep, and the great advantage to the state in having such an important recreational resource that was run almost entirely by private citizens.

They were aware of their power to acquire land for the state, but their budget and other commitments make this a low priority item.

They did stress, however, their willingness, as well as the clear legal mandate, to accept gifts of land, or easements on land in connection with the Maine Trails System, which specifically includes the AT. Any such easements would have to go through the Attorney General's office, but the Bureau was confident they would be accepted.

Parks and Recreation had never accepted a "floating" easement, as discussed in the Land Protection Devices section, but thought that this type of arrangement might meet the needs of the pulp and paper companies.

The Bureau representative also mentioned that they are prepared to contract someone to help negotiate for easements. Such a person might make an excellent member for a negotiating team.

The Bureau of Forestry**does not have many directly regulatory functions in relation to the timber industry of Maine, although they do advise them on forest management practices. There are some regulations, however, which might have a bearing on the AT: The Slash Disposal laws, under

* Thomas J. Cieslinski, Supervisor, Planning & Research
**A. Temple Bowen, Jr., Director, Southern Regional Hdqrs.

Title 12, M.R.S.A., which generally prohibit accumulation of slash within 25 to 50 feet of roads, utility lines or other people's property; and the LURC Statute (Title 12 M.R.S.A. Sections 681-689) which regulates forest practices within 250 feet of rivers and great ponds. Unless special permission is granted, it prohibits logging of more than 40% of volume, piles of slash more than four feet high and any accumulation of slash at all with 50 feet of the water.

The Land Use Regulation Commission (LURC)* is a government agency probably unique to the State of Maine. Their mandate to bring "*principles of sound planning, zoning and sub-division control to the unorganized areas*" includes a specific reference to the preservation of outdoor recreation, including hiking, and affects the greater part of the acreage of the State of Maine, including most of that traversed by the AT. In theory, their powers are great and their responsibility to the Trail clearly defined.

LURC has completed an Interim Zoning Plan for the unorganized territories, to which we owe the fine series of maps that served as the basis for our environmental survey of the Trail. Under this plan, which is discussed in more detail in the Legislative section of the handbook, a corridor 200' in width along the Trail right-of-way is zoned P7, which effectively, although perhaps temporarily, protects this corridor from major disruption although not from all foresting. Part of the Trail is zoned P-11 along lumber roads and public highways.

In political actuality, however, LURC has changed leadership and hence direction in the past and will do so again in the near future. In addition, budget restrictions serve as a very real brake on the exercise of their powers. We cannot, therefore, recommend relying on their zoning plan for definitive protection of the AT. It does provide at the least a "breathing space" in which the MATC can take more permanent steps to ensure the wilderness character of the Trail.

* James F. Connors, Supervisor, Mapping & Res. Analysis

The Bureau of Public Lands,* again, is an agency peculiar to Maine. The history of the state's Public Lots goes back to the days when Maine was still part of Massachusetts. Again, the Legislation section describes the situation in more detail. As of August, 1975 the Bureau has been in negotiation with several major companies for the inclusion of sections of land that had been timbered into the Public Lot system. It seemed likely that sections of the AT would be involved in these negotiations, and that these sections would then be "secured" through belonging to the state rather than being in private hands.

Present law, however, states that the Public Reserved Lands be managed for "a sustained yield of products and services." The Bureau certainly considers the AT a legitimate and desirable use of Public Lands, and the presence of the Trail across a section of land under consideration for Public Lot status would be a factor in its decision. It cannot be the only factor if the Bureau is to fulfill its obligation to the people of Maine, and any efforts to persuade the Bureau to "gerrymander" its Lots to include the Trail would be counterproductive.

The final results of the negotiations should be public by the time this handbook is printed, and may well provide protection for a considerable portion of the Trail in Maine.

* Richard Barringer, Director

THE HISTORY OF TRAIL AGREEMENTS IN MAINE

The vision of the originators of the Appalachian Trail, and the ideals to be advanced are reflected in the Constitution of the Appalachian Trail Conference:

> *The purpose of this organization shall be to promote, construct and maintain a connected trail, to be called The Appalachian Trail, running, as far as practicable, over the summits of the mountains and through the wild lands of the Atlantic Seaboard and adjoining states from Maine to Georgia, to be supplemented by a system of primitive camps at proper intervals, so as to render accessible, for tramping, camping and other forms of primitive travel and living, the said mountains and wild lands, and as a means for conserving and developing, within this region, the primeval environment as a natural resource.*

In 1922 the first mile of trail was cut and marked. Fifteen years later the project was initially completed. As a route for foot travel only, the Appalachian Trail is the longest marked path in the world, an invaluable national asset. Yet, during the years of locating and bringing into existence the Appalachian Trail, it became obvious that it was more than a mere footpath, and that to fulfill the purpose for which intended the Trail's surroundings would require safeguarding. Thus the concept of the Appalachian Trail became the Appalachian Trailway, a footpath through the wilderness, with that wilderness character being as

important as the pathway itself.

In recent years encroachments on the unprotected mountain and forest domains have increased. It became apparent not only that the Trailway environment was in grave danger of being severely degraded, but that it might also become impracticable to maintain a continuous trail route. The National Trails System Act of 1968 established the Appalachian Trail as a National Scenic Trail, thus ensuring its continued existence. The problem remains of how to perpetuate the primeval environment where it still exists, and to prevent the encroachment of further development on the remainder.

In Maine, public use of the AT from the beginning has been with the permission of the various landowners over whose property the Trail passes. That arrangement remained generally satisfactory to both the Maine Appalachian Trail Club and the landowners until the mid-1960's. Then the Club became acutely aware of the pressure for development of land adjoining the Trail, and of the danger that such development posed to the wilderness character of the Trail. Some of the landowners, possibly concerned over the probability of Congressional legislation regarding the Trail, were also motivated to come to a more definite agreement with the Maine Appalachian Trail Club (MATC) over public use of the Trail. Several landowners joined with the MATC and the State of Maine in "Memorand(a) of Agreement for the Promotion of the Appalachian Trailway." [1]

In those agreements the landowner states that it is his desire to "*cooperate in the protection and perpetuation of the Appalachian Trail.*" The landowner agrees to carry out a "program" looking toward the creation of the Appalachian Trailway. The program consists of three parts, in which the landowner agrees to:

> 1. Designate a zone with a minimum width of one-quarter mile from the Trail. The construction of paralleling routes for public motorized transportation and development which are incompatible with the zone's existence "*in the judgment of the owner*" are prohibited within the zone. Logging operations and the construction of logging roads not open to the public

are specifically excluded from the prohibitions. However, cutting *"primarily for timber production"* is prohibited within one hundred feet of the Trail.

2. Allow the maintenance and future development of campsites and lean-tos, including their related facilities along the Trail, to the extent consistent with the landowners established policies.

3. Cooperate with the appropriate federal and state agencies, the Appalachian Trail Conference and the MATC *"in protecting the scenic and recreational values"* of the Trailway.

There is a provision for termination or modification of the agreement by any party upon six months written notice. The agreements are signed by the landowner, the Maine Appalachian Trail Club, Maine State Park and Recreation Commission and Maine Forest Service. They are filed with the Park and Recreation Commission.

As a means of protecting the AT, the agreements clearly are insufficient, especially in view of the termination provision. The landowner does not even grant the public a right to use the Trail. In fact, the agreement is not actually with anyone; it is a mutual agreement of the landowners to carry out the program. However, the landowner's expression of desire to cooperate in the perpetuation of the Trail and the protection of its scenic and recreational values may be useful in negotiations, at least insofar as the landowner has expressed willingness in a written agreement to cooperate with the MATC and the appropriate state agencies. Negotiators will want to consult the specific agreements prior to any contact with individual landowners, since some modified the agreement prior to signing. The modifications involve the prohibition of timber cutting within one hundred feet of the Trail, and disclaim landowner liability to users of the Trail for personal injury or property damage.

Following is the opinion of the Regional Solicitor, U.S. Department of the Interior, regarding these Memorand(a) of Agreements, dated November, 1972.

This agreement, from a legal standpoint, accomplishes very little. It does not contain a grant by the landowner to the general public to use the Appalachian Trail as a pedestrian path. It does not contain a description of the route. It does not specify the width of the route. Finally, it is not an agreement with anyone.

It was the intention of the Act that the landowner would enter into a cooperative agreement with state or local governments to provide the necessary trail right-of-way. The agreement before us states that the respective owners mutually agree to carry out a program; no mention is made of any state, county, city or trail club as the other party to the agreement. Having noted these objections, I cannot see where any useful purpose would be served by revising the instrument.

In a letter to Mr. Gray dated September 8, 1972 the President of the Maine Appalachian Trail Club indicates that the landowners are reluctant to enter into stronger agreements and this would undoubtedly be his response if a revised agreement was furnished to him.

At page 52 of the guidelines prepared by the National Park Service there is a suggested Appalachian National Scenic Trail right-of-way cooperative agreement. The state and local agencies should be encouraged to use this agreement to the greatest extent possible in obtaining the necessary trail right-of-way. If a cooperative agreement cannot be obtained, the state or local governments should be encouraged to acquire lands or interests therein to provide the necessary right-of-way. I am not at all certain as to the role the Maine Appalachian Trail Club plays in this matter.

Section 7e of the Act provides that the state or local governments should enter into written cooperative agreements with landowners and makes no mention of private trail clubs. I assume there would be no objection to a trail club negotiating an agreement with a private landowner for the necessary right-of-way but it would seem advisable to me that the agreement should be assigned to a state or local agency. The agreement before me provides, however, that it cannot be assigned without the written permission of the grantor.

To summarize, it seems to me there should be an agreement between a landowner on the one hand and an eligible agency on the other which would provide a right-of-way for public use across the property of the landowner and that, sofar as possible, the duties and responsibilities of the parties which are set forth in the cooperative agreement suggested by the Park Service should be included. If the Maine Appalachian Trail Club enters into these cooperative agreements with the landowners, provision should be made in the agreement for the assignment of the rights to the state or local governments involved.

The suggested Right-of-Way cooperative agreement, referred to by the Solicitor is found at page 52 of the Guidelines, Appalachian Trail - published by the USDI/ National Park Service.
September 15, 1971

In addition to the Agreements, leases in which the State of Maine is lessee are in effect with three landowners.[2] The interest leased is a *"right to re-establish and confirm and maintain as now established"* the Appalachian Trail. There is no mention of a corridor or right-of-way width.

The lessor agrees not to unreasonably obstruct or damage the Trail, but specifically reserves the right to use the leased premises *"in connection with the care and operation of its lands."* Clearly such generalized protection is insufficient from the MATC's point of view, as it does not effectively restrict the uses the lessor may make of the premises. A lessor could destroy the wilderness character of the area adjacent to the Trail without unreasonably damaging or obstructing the Trail itself, and thereby do so without violating the lease.

The leases are for one year, then from year to year unless cancelled by either party upon six months written notice. This cancellation provision further limits the effectiveness of the lease as a means of promoting the Trailway concept. The leases are filed with the Maine Park and Recreation Commission.

Reference to the list of landowners of the AT makes it obvious that even these very questionable leases involve only a minority of people and corporations who must be dealt with.

Arrangements with the remaining landowners are reflected in casual correspondence, verbal agreements and "understandings" of an equally informal nature. These seem to have worked well during the history of the Trail, but it is obvious that they have no legal validity whatsoever.

It might be assumed that the very informality of these agreements reflects the known sympathy of the particular landowner to the AT. In other words, the AT tried for more formal licenses with those landowners whose attitude towards the Trail was in doubt, while relying on the good faith of the others. If this is indeed the case in most instances, it may be relatively easy to translate these informal agreements into some legal form that will protect the Trail in perpetuity.

If the research done for this project uncovers some landowners not previously identified by the Club, with whom no agreement, formal or informal, had been reached, the prescriptive license justified by "open and notorious use" might be invoked.

Landowner's Duty to Hikers and Campers

The scope of a landowner's duty to hikers and campers using his land is set forth in Title 12, Section 3002 through 3004 of the 1974 (10th) Revision of the Maine Revised Statutes Annotated 1964. Identifying the extent of the duty, if any, which the landowner owes to users of his land is important because, in general terms, liability for negligence is predicated upon one's breach of a duty which is owed to another. The content of the duty owed is dependent in part on the status of the one to whom it is owed.

When a landowner has not granted permission to use his premises, he owes no duty to keep the premises safe for use by hikers/campers, nor must he give warning of any hazardous condition existing on his premises (Section 3002). When a landowner does give permission to use his premises for hiking/camping purposes, but there is no benefit flowing to the land-owner in exchange for that permission, the hiker/camper has the status of a licensee. The landowner's general duty to a licensee is only the negative one of refraining from wantonly injuring the licensee. Specifically, the landowner, by giving permission does not extend any assurances that the premises are safe for the purpose for which permission is granted; he does not constitute the person to whom permission is granted an invitee; he does not assume responsibility for injuries caused by persons to whom the permission is granted. (Section 3003).

The final section, 3004, makes it clear that the above sections do not limit the liability of the landowner which would otherwise exist in three instances. The first of these is the liability for willful or malicious failure to guard against or warn about, a dangerous condition. It merely means that landowners cannot purposely allow users of their land to encounter dangerous conditions, then escape liability through another section of the statute. The second situation is where permission to use the land is granted in return for some benefit to the landowner. Then the one to whom permission is granted rises to the status of an invitee; that is, his presence on the land is of mutual benefit to the parties, or at least that is the historical theoretical basis. The duty owed to an invitee is the duty of reasonable care. This care is generally defined as that which a reasonably prudent person would exercise in like circumstances. However, this situation is restricted to cases where the benefit is paid to the landowner by someone other than the State. The implication of the statute is that the user then (i.e., where the State supplies the consideration in exchange for permission) has only the status of a licensee, hence the duty of reasonable care is not owed. The third situation in which a landowner's liability is not limited by this statute is where injury is caused by persons to whom permission to use the land was granted to other persons as to whom the one granting permission (the landowner) owed the duty of reasonable care. So, as to his invitees, the landowner may be liable for injury caused by his licensees and other invitees. This simply means that the landowner must be overly solicitous of those who have conferred a benefit upon him in exchange for the right to use his land.

The landowner, then, except in those situations where he receives benefit in exchange for the permission to use, would incur liability only when he willfully or maliciously fails to guard, or give warning of, a dangerous condition. Common sense dictates that no one would agree to indemnify another for such outrageous acts. Indeed, one would expect the landowner to refrain from such activity. However, to overcome an abundance of caution, one could agree to indemnify the landowner for liability other than that for willful or malicious negligence.

When the hiker/camper has the status of invitee, that is he has conferred a benefit upon the landowner in exchange for permission, the possibility of landowner liability is much

greater. Indemnification then is a real issue. If the MATC gives the benefit to the landowner, the latter can become liable for simple negligence, for the breach of the duty of due care to hikers/campers on the land within the scope of the permission granted. The problem can be obviated, the statute implies, by having any benefit that is given in exchange for permission to use given by the State, which is presumably the most desirable in any event.

WARNING: Beyond this statute there are several factors, presumably, bearing on the potential liability of landowners. This statute does, however, limit that potential. Obviously, when indemnification reaches final stages of negotiation a real legal opinion should be obtained.

History and Description of the Statutory Protection of the Appalachian Trail

A statutory schema for the protection of the Appalachian Trail has been established since 1968 at the federal level and since 1973 at the state level in Maine. This treatment of that schema is intended to be a general discussion of the legislative history and a more specific description of the legislation as it affects the AT and its right-of-way in Maine.

In the 1930's the primary focus of the AT Conference was completion of a continuous trail from Maine to Georgia. Upon

the initial completion of the Trail in 1937, the focus turned to relocations of sections of the Trail to more suitable wilderness areas and to a permanent protection and preservation of the Trail.

The first attempts at preservation and protection of the Trail were in 1938 by private agreement between the Conference and the National Park Service and the U. S. Forest Service. These agreements were to afford the Trail a protected zone of two miles against incompatible development along its route through the National Parks and Forests. The next year saw the formulation of similar agreements which would be signed between the Conference and the states through which the Trail passes and would be applicable to state-owned areas. These agreements were limited to a protected zone of one-half mile because of the limited land-holdings in most state-owned areas. This initiative for protection of the Trail ceased with the outbreak of the Second World War.

The first attempt at legislative protection of the Trail came in 1945 when as a member of Congress, one of the Board of Managers of the Conference, introduced a bill to create and protect a National System of Foot Trails. This bill was never reported out of Committee. A subsequent attempt in 1948, reflecting suggested amendments, met the same fate.

By the late 1950's, encroachments on the Trail's right-of-way in the unprotected areas were increasing in frequency and magnitude. The perceived danger was that the Trail environment would be severely degraded by second-home and mass recreational developments, as has happened more recently in Maine in the Sugarloaf Mountain area. The Conference's worst fears, that it might become impracticable to maintain a continuous Trail route from Maine to Georgia, were heightened in 1958 when the southern terminus of the Trail had to be relocated northward from Mt. Oglethorpe to Springer Mountain in Georgia because the intervening area had become incompatible with the wilderness concept of the Trail. As the threat to the Trail became more and more real, especially in Northern Virginia and the Mid-Atlantic states, a consensus emerged that public ownership and protection was the best safeguard.

After considerable background work, Senator Gaylord Nelson of Wisconsin introduced a bill in 1964 to establish, preserve and protect an Appalachian Trailway. No action was taken on the

bill, but Senator Nelson re-introduced it in 1965. Also in 1965, President Johnson called for a national system of trails throughout America patterned on the Appalachian Trail. A study was done by the Department of Interior. Bills were introduced into both Houses of Congress. The Conference Committee aided in the drafting and redrafting of a number of bills. Finally, on October 2, 1968, President Johnson signed into law the National Trails System Act which specifically directed that the Appalachian Trail be protected and preserved as the Appalachian National Scenic Trail.[3]

The National Trails System Act, as part of its legislative scheme, specifically encouraged the fourteen states through which the AT passed to enact legislation affording similar state protection to the AT within their borders. The Maine Legislature then enacted the Maine Trails System Act in 1973.[4]

Although they are not the only pertinent federal and state legislation, the federal and state Trails Acts are the primary relevant legislation and will be discussed with greater particularity. Other legislation will be discussed insofar as it relates to protection of the Trail under the Trail Acts.

The National Trails System Act establishes a comprehensive program through which the federal government could establish, preserve, and protect the Trail, if it so desired. The AT is specifically designated a National Scenic Trail by the Act. The Director, National Park Service is placed in direct supervision of the project within the Interior Department. The Director was required to, and has, published notice in the Federal Register of the selected right-of-way, with maps and descriptions. These are general maps and descriptions which permit minor Trail relocations. The Act directed that the Director obtain the advice and assistance of the states, local governments, private organizations, and landowners in making the right-of-way selection. MATC assisted in this right-of-way selection process as it occurred in 1969-70.

Acquisition of the right-of-way is to be accomplished differently depending on whether the private lands are within the exterior boundaries of areas already administered by the federal agency (the National Parks and Forests) or outside those boundaries. Within the boundaries the federal agency

is authorized to acquire the land; however, outside the boundaries of the federal lands, the Director is only authorized to encourage state and local governments to acquire the land or to execute a cooperative agreement with the landowner. Provision is made that the Director "may" take the action necessary to acquire the land or the cooperative agreements if the states don't act within two years of the publication of the right-of-way in the Federal Register. (The right-of-way was published in 1971).

The Director is granted the authority to acquire land as is needed to preserve and protect the Trail by a wide range of methods. However, he is limited to outright purchase of the land, in fee simple, only if all other methods of public control are not sufficient to protect the Trail.

A limited federal ability to exercise the power of eminent domain is authorized if all other methods of acquisition fail.[5]

The act directs the National Park Service to encourage the states to *"operate, develop and maintain"*[6] the Trail in areas outside federal control under the auspices of state legislation affording protection to the Trail.

States are encouraged to request federal funding to acquire a right-of-way on a 50/50 basis. Matching funds, through the Land and Water Conservation Fund are available to the states. $5,000,000 was authorized to be appropriated for actual acquisition by the National Park Service or U. S. Forest Service; however, none of it has been appropriated.

The federal Act also provided that the National Park Service and the states could enter into written cooperative agreements by which the state would agree to operate, develop or maintain designated portions of the Trail in furtherance of the purposes of the Act.[7] Accordingly, after negotiation, the National Park Service and the state entered into a contractual agreement, to be carried out by the Bureau of Forestry, which defined the State's obligations, solely or in conjunction with the Service, for the location, development, preservation, maintenance and administration of the AT as it passes through Maine. The agreement is specifically directed to the State's responsibility to protect the Trail primarily

as a footpath and to preserve its natural scenic beauty.[8]

In light of the express language in the Federal Act encouraging state legislation, because of the duties undertaken by the State in the agreement with the Service, and the expressed interest of groups like MATC, Maine passed in 1973 a comprehensive Maine Trails System Act which directed protection of the Trail.[9]

The Maine Trails System Act is included in the statutes as one of the powers of the Bureau of Parks and Recreation. The Bureau is directed by the Act to establish trails on stateowned lands and to *"encourage the establishment of trails on private lands by government agencies or private organizations."* [10] The Bureau is authorized to acquire such interests in the land as is necessary to protect all trails under the Act. Each trail corridor must include a buffer zone. The Bureau is *"authorized to . . . acquire"* [11] a fee simple or lesser interest (i.e., a scenic easement) in the right-of-way and less than a fee interest in buffer zones. The exercise of a limited power of eminent domain is authorized for the taking of land if all other reasonable methods fail. [12]

The Act strongly encourages agreements between the Bureau and private organizations or government agencies for the assumption of the primary responsibility for establishing, maintaining and administering the trails.

The federal and state Acts appear to establish a comprehensive scheme by which the two levels of government can acquire the land necessary to protect and preserve the Trail, and a method by which the Trail can be maintained and administered. The Acts, however, have a significant shortcoming in that they require that very little actually be done by the federal or state agencies. Both of the Acts are carefully drawn to shift the major burden of protection to other entities - the federal Act to the states and local groups; the state Act to local governments and private organizations or individuals.

Reality has also intruded; there are no readily available funds for land acquisition. Although the federal bill authorized $5,000,000 to be appropriated; none has been appropriated. The State of Maine has no specific funds

available to purchase land or to match federal funds. Yet even this picture is not totally without hope. Although it will not affect the Trail in Maine, the U. S. Forest Service continues to purchase privately-owned land within the borders of the National Forests, and location of the Trail on that land is a significant factor in its acquisition. The National Park Service, although it is unwilling to expend funds to purchase land for the Trail right-of-way, is apparently willing to meet all pre-acquisition costs - survey, appraisal, attorney's fees, etc. - if such an outlay of funds would ease the private or state burdens sufficiently to permit their purchase of the property interest.* Additionally, the matching state funds required to general federal contribution from the the Land and Water Conservation Fund need not be from the general fund of the state but can be privately donated funds specifically ear-marked to generate matching federal funds.

The salient feature of the Acts is that each will leave to other bodies the driving force behind the implementation of the Acts. Each also mentions private groups or organizations as parties which could best accomplish the task. private organization as guiding and driving force is the primary focus of the state Act.[13] The whole scheme is perfectly set up for an interested and concerned group like the Maine Appalachian Trail Club to take the initiative and to encourage acquisition, protection, maintenance, and administration in a manner it considers most beneficial to the protection of the wilderness concept of the Trail. The interest and expertise is available to MATC to lay all the groundwork and negotiation. Capital, then, is a primary problem to overcome. With such a clear legislative desire that concerned private organizations assume the primary responsibility for establishing, maintaining, and administering the Trail in Maine, the MATC has the opportunity to become the primary legal force behind the Appalachian Trail in Maine.

A number of other Maine statutes concern or affect the application of the Maine Trail System Act or the method and type of interest to be acquired in the land.

Potentially a most significant one is the law defining and locating the Public Reserved Lots. One thousand acres of

* Based on colloquy with David Ritchie, August 1975.

land in every township or plantation is to *"be reserved . . . for the exclusive benefit of the State of Maine . . ."* [14] The land is to be average in quality, situation, and value as to timber and minerals with the other lands of the township. The Forest Commissioner is permitted to select and locate the public reserved lots in townships sold and not incorporated by written agreement with the landowners. In locating the public lots, some of the factors to be considered are public recreation needs, scenic quality, value as to timber, preservation of significant natural, recreational and historical resources, and the provision of comprehensive or long-range management plan for use of public lands.

The Law Court has decided that the State has constituted itself as trustee, retaining legal title for the use of the town and retaining the power to designate the particular uses of the reserved lots. An Opinion of the Justices of the Law Court in 1973 stated that the Public Lots may be used for other public uses than schools and the ministry.

This is all so important today because the Bureau of Public Lands is currently engaged in negotiation with a number of the large landholders in the wildlands of the state regarding the location of the Public Lots.

If the Bureau of Public Lands is able to locate any of the Public Lots along the right-of-way of the Trail, it will have to protect the AT as required by the Maine Trail System Act. This conclusion is reached because by retaining title to any Public Lots which the AT crosses, the state must then comply with the Trails Act requirement that the state establish, preserve, and protect the Trail on any state-owned land. This fortuitous location could relieve MATC and the public of a significant financial burden in acquiring land for a right-of-way in Maine.

As previously mentioned, the Bureau of Public Lands has other goals besides protection of the AT which must be taken into consideration. However, the Bureau should be kept aware of the importance of locating Public Lots along the Trail and large landowners could be encouraged to offer to the Bureau of Public Lands parcels as Public Lots which encompass the Trail right-of-way.

The second significant piece of legislation is that which creates the Land Use Regulation Commission.[15] This legislation requires first an interim zoning of the unorganized townships and plantations and then after a period of years a final zoning. The vast majority of the length of the Trail in Maine is located in unorganized townships or plantations and is, therefore, subject to LURC zoning. The interim zoning standards and permitted uses had to be and were enacted by January 1, 1975. Three major interim district classifications were defined, and then each major district was further broken down into subdistricts, each with its own standards and permitted uses. The most restrictive major land classification - the Protection District - and its subdistricts are of concern to the protection of the Trail and the type of interest in the land that might be acquired to protect it. Of primary concern is the Interim (P-7) Protection Subdistrict because it is specifically drafted to protect *"significant primitive trails."*[16] The definition of primitive trail in the Interim Standards is virtually the same as the statutory definition of primitive trail in the Maine Trails System Act which specifically designates the AT as a primitive trail. The (P-7) subdistrict creates a protective zone of no less than 100 feet on either side of the Trail. Incompatible uses are not permitted within the subdistrict. All of the Trail within LURC jurisdiction has been zoned (P-7), some with a greater protection area than the minimum 100 feet, except for a few areas where the Trail is to be relocated. These areas are zoned (P-11), a special subdistrict whose criteria are set on a case by case basis. In these areas only the immediate right-of-way is protected, but upon permanent relocation of the Trail petition can be made for (P-7) zoning of those areas.

The (P-7) zoning along the length of the Trail is significant because it limits the owner's use of the land to those uses which are compatible with the wilderness concept of a primitive trail. This may make it easier to get a landowner to grant a restrictive conservation or scenic easement to MATC, because the landowner will not be giving away much Moreover, if MATC is able to obtain such restrictive conservation or scenic easements, enforceable legal interests in MATC would then be created beyond the LURC zoning.

Shoreland zoning is required in those municipalities and townships not within LURC jurisdiction. LURC subsumes

the Shoreland zoning in its Interim (P-3) Protection Sub-district. Shoreland zoning requires that the area within 250 feet of any major body of water, including rivers, be zoned. It does not mean uses incompatible with the wilderness concept won't be allowed; it means they will be regulated. And it doesn't given any protection to the Trail or persons who might want to hike or camp on the land. In short, it means that Shoreland Zoning may keep the view pristine, but that entrance upon the land must be gained through a bargained for right-of-way.

The five organized townships through which the Trail passes were in the process of Shoreland Zoning during the summer of 1975. All but Carrabasset Valley indicated that Shoreland Zoning was all the zoning they intended to do. A member of the Planning Commission of Carrabasset Valley indicated that they had not considered specifically zoning to protect the Trail. He indicated that it might be interesting to consider it.

A statutory scheme exists at the federal and state levels which could ensure the long-range protection and preservation of the Appalachian Trail as a natural and recreational resource; however, neither level of government is willing to make the major investment of money, personnel, and time which would be required to establish that protection. All that is required is a catalyst to breath some life into the statutes. Both Trails Acts, but especially the Maine Trails System Act, prefer an interested, concerned private organization to take primary control and responsibility for development and management of the Trail. The Maine Appalachian Trail Club is the type of concerned private organization which has access to the expertise needed to so shape the future of the Appalachian Trail in Maine as it sees fit.

An Overview of Tax Considerations

An important consideration to potential sellers or donors of property or easements is the impact that the transaction will have on their taxes. The tax impact may determine whether or not the transfer will be made.

In the case of the Appalachian Trail and its surrounding lands, the taxation situation is fairly complex because we are dealing with a variety of landowners: large corporations, land holdings, individual owners and townships. Each has its own tax structure to be considered. These particular considerations are brought up in the section on Land Protection Devices. In this section we will outline the general principles that apply to land transactions.

State Taxes as They Apply to the Trail Land

1) Maine Tree Growth Tax

Forest lands in the State of Maine in parcels larger than ten (10) acres may be subject to the Maine Tree Growth Tax. The property owner must apply for treatment under this statute with either the State or the local tax assessor. The land is valued in accordance with the current value of an increment of growth of one acre of stumpage, capitalized at 10%. The increment of growth is estimated on the basis of data published every ten years by the U. S. Forest Service. Stumpage prices are reported by the Maine Forestry Bureau every two years. The capitalization rate is set by statute. Valuations differ by county of location and by the type of tree - hardwood, softwood, or mixed. Valuations bear little or no relation to actual market value of individual tracts of land. The tax rate applied against the valuation is set in accordance with estimated revenue needs for selected state functions supported wholly or in part by the Tree Growth Tax.

If a portion of a tract of land taxed under the Tree Growth Tax were given, the tax assessment would be pro rated downward, in direct proportion to the acreage given relative to the size of the original tract.

Tax schedules by county and tree type are readily available from the Bureau of Property Taxation.

2) Municipal Property Taxes

Land not in the unorganized territories is not subject to the Tree Growth Tax unless special application is made. However, the donor's municipal property tax liability will be reduced by the amount of tax directly attributable to the property donated. Generally this effect is significant even in cases where actual ownership is not given up but rights to develop are. Municipal tax rates are available from the individual towns.

3) Income Taxes

The government allows each corporation or individual, regardless of total income earned, a deduction for gifts made to the state or to charitable organizations. In the opinion of Congress such gifts merely fulfill the needs of our society directly. Without gifts generally tax dollars would have to be spent for the same purposes. In fact, it may be argued that charitable contributions provide a more efficient means of allocating our money and natural resources than taxation.

Although everyone is entitled to a deduction for charitable gifts the amount of the deduction is subject to certain limitations. For example, even if taxpayer Mary Smith makes a cash charitable contribution of $20,000 in 1975 and has an annual income of $30,000 for 1975, she can deduct only 50% of her annual income as a charitable deduction. In this case, Mary will be able to deduct 50% of $30,000, or $15,000, as a charitable contribution in 1975. However, the remaining amount may be deducted in some other tax year providing the charitable deduction limitation in that year has not been exceeded. If property other than cash is given a different limitation may apply. She may be able to deduct only 30% of her income depending upon whether or not she elects to reduce the value of the property donated by half of the amount she would have made if she had sold the property.

If a corporation contributes property it can only deduct an amount that does not exceed 5% of its taxable income. It cannot change the limitation on the amount which can be deducted in any given year depending on the character and value of the property. Any excess that is not deductible in the year of the gift can be deducted in the next year providing that the 5% limitation has not been exceeded in that year. Generally the income of a corporation is larger than any single individual and as a result the actual amount of deduction allowed in the year of the gift to a corporation is substantial.

In summary, the favorable income tax consequences of donations to the state or to the Maine Appalachian Trail Club could overcome the initial apprehension concerning the cost of giving property away, especially in the case of individual owners.

Although many people are willing to donate property for a worthy cause, they are unwilling to pay any additional out-of-pocket money for their generosity. Such an attitude is neither unreasonable nor uncommon. A simple example of this inhibiting effect is the classic comment that it would probably cost more in legal fees than some property is worth in order to give it away. This appears especially true with seemingly worthless property, such as ridgelines, swamps, isolated ledges, unproductive wood lots or other undevelopable property. If the property isn't worth anything then it certainly does not make sense to spend money to give it away. However, the 'worthless' property may be valuable to the MATC. The tax consequences of such a gift can reduce the cost of the gift and in some cases may make the gift financially as well as personally rewarding

The State of Maine is made richer by gifts which preserve its scarce natural resources. In addition, the gifts can be accomplished without changing the individual's net asset position or consuming a lot of the donor's valuable time.

Remember that income of the donor is not important except in determining whether the entire gift is deductible in the same year that it is given. In this sense low annual income should not significantly inhibit the income tax advantage of charitable transfers to the state or the MATC.

In each case mentioned above, the value of the land is equal to its market value at the time of the donation, and not to its assessed valuation. The market value is customarily determined by reference to sales of similar property in the same area within a reasonable span of time. The sale of a portion of a tract of land may have a decidedly negative impact upon the value of the remaining land in the tract, especially when the sold (or donated) portion divides the tract into two pieces of land, one of which may have little or no market value by virtue of its size, shape, lack of access, etc. In such cases, the value of the donation is equal to the difference between the market value of the full tract before the donation and its value after the donation - and this difference may be substantially larger than the market value of the donated strip considered without reference to the rest of the tract. The Maine Department of Transportation (Highway Department) has been involved in litigation over the market value of land (fair compensation) appropriated in strips by the State for highway construction, and

could be consulted to find out how they have arrived at valuations of strip property.

Estate Taxes

The impact of estate taxes is another important consideration to individuals in deciding whether to transfer property to the state or the MATC. Generally, the transferred property will not be included in the estate if the transfer is made at least three years prior to death. If the transfer is made effective upon death, a charitable deduction similar to that allowed for income taxes is allowed for estate taxes.

An example is a case in which a taxpayer has property worth $80,000. Assuming that he is unmarried and is leaving all of his property to a close friend, the estate after administrative costs would probably be valued at $75,000. After deducting the $60,000 estate tax exemption, the taxable estate is $15,000, and the estate would have a tax of $555. If the taxpayer had given the property worth $15,000 during his life to a charitable organization his estate would only be worth $60,000. His taxable estate in that case would be zero because the first $60,000 is tax exempt. The same result would occur if he had left the $15,000 property to the state or the MATC in his will instead of leaving all of his property to his friend. The estate of $15,000 would be entitled to a charitable deduction of $15,000 and there would be no tax.

In summary, estate taxes may be avoided by gifts to the state or the Maine Appalachian Trail Club. An important thing to remember is that by giving property away in this manner, the taxpayer not only avoids the estate tax on the property given away but also reduces the rate of the tax on any remaining property by reducing the total amount of the estate. It should be noted, however, that there are significant differences between individual and corporate landowners. One important difference is that corporations are not subject to estate taxes. Corporate dissolution or the like will not create an estate of the corporate assets.

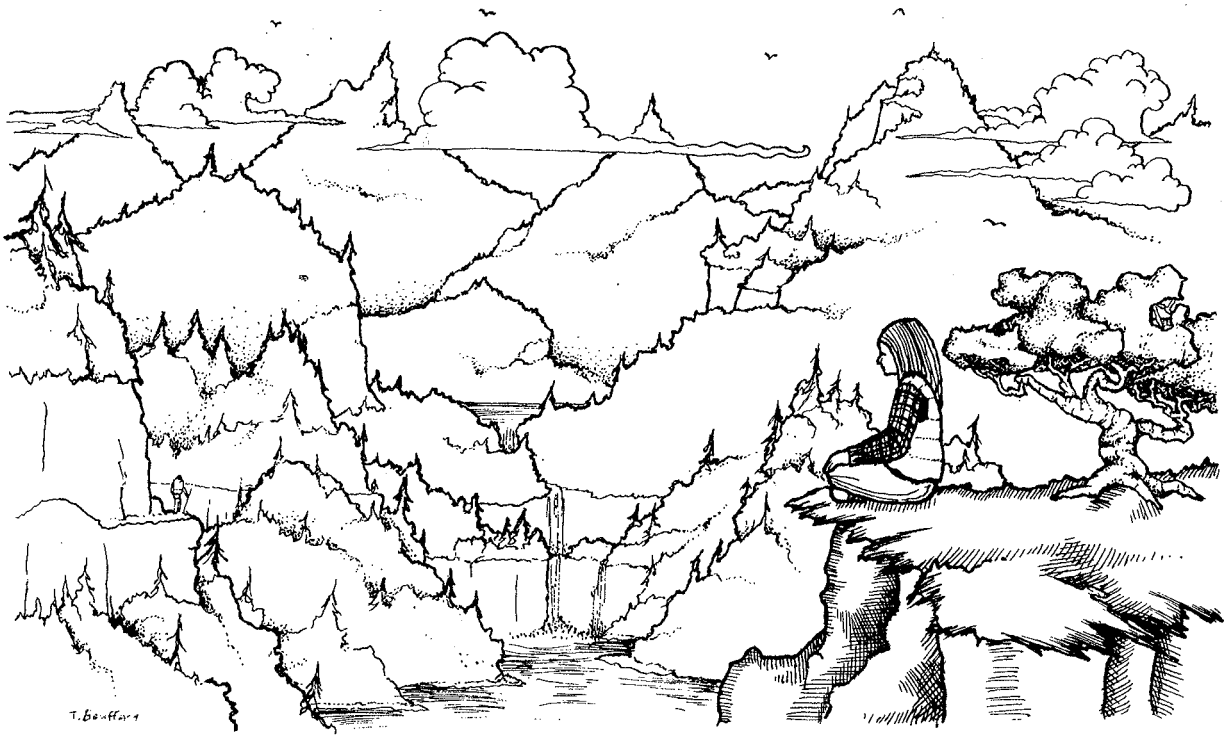
Property Taxes

Another tax consequence of transfers to the state or the MATC is the effect that the transfer of some of their property interests may have on property taxes. Owners of land are only too familiar with their growing property tax bills. Property taxes can be reduced by merely selling or giving property away. However, many people fail to realize that they can reduce their property taxes without giving away any land at all. By simply agreeing to use land in a certain way, the taxes can be reduced. The amount of property tax reductions depends upon the remaining value of the land. The value of the land is reduced generally by an amount equal to the value of the right that is sold or given away. Usually an appraiser or a tax assessor can ascertain the value of that right. In the case of a landowner with 100 acres and property taxes of $200 a year he could possibly agree not to develop his land in a certain way and reduce the property tax. For example, if the taxpayer owned property next to a winter resort and agreed not to allow home building on his property, the value of the property would probably drop because of his agreement. The taxpayer would then pay lower taxes because he has made his property less valuable for developmental purposes. The fact that his property is located next to a ski resort makes it more valuable because of its developmental potential.

The important factor is that the taxpayer must actually give up a real property right and that everyone who later acquires or owns the property must also be bound by that agreement. There is no property tax advantage if the owner of a large tract of desert agrees not to grow trees on his property. Nor is there any tax advantage if the owner says that he or she will not use the property in a certain way but any new owner can do whatever the owner desires.

Most of the property crossed by the AT is taxed under the Tree Growth Tax or some other reduced tax rate other than under the conventional property tax. Whether a penalty would be assessed when a landowner changes the use as forest lands to permit limited harvesting and limited recreational use is uncertain. All of these purposes are similar to the very purpose of the reduced tax in the first place; the preservation of woodlands in Maine and the limitation of development. It would appear inappropriate to apply a penalty to an owner of land subject to Tree Growth Taxes for granting an interest to MATC or the state allowing limited recreational use.

If an owner of property gives away some of his rights to the state or to the Maine Appalachian Trail Club, the income, estate and property tax advantages then can combine to lower the owner's total tax bill. The difference in amount of taxes paid after the gift will depend upon the character and the value of the gift. Even though the value of the gift is small, owners can take advantage of the transfer by utilizing these tax consequences.



Corporations,with whom most of the negotiations will take place, do pay income and property taxes. The tax structure in Maine, however, is such that it is unlikely that tax benefits will serve as a major motivation for large companies to donate either the land itself or easements on land use to the state or to the MATC. The Tree Growth Tax, which affects nearly all the land in question is so minimal, and the land holdings of these companies so large, that the savings generated by transfer of property would be insignificant. The same situation holds true at the income tax level, especially since these companies are not, in most cases,

presently deriving income from the land directly adjacent to the Trail.

Property Valuation

We should stress that determining the value of a property interest, whether for income, property, or estate tax purposes, is at best described as an inexact science. The valuation of a particular property interest depends upon a myriad of factors uniquely attributable to that interest. There are no fixed rules by which the value can be absolutely determined. Appraisers using years of experience combined with good common sense can generally agree as to value but rarely as to methods or factors in determining that value. Once value is determined with a degree of certainty, it can be utilized in determining the tax consequences previously discussed. The method is only a means of achieving a desired end, but it is essential to understand some of these basic methods which might be utilized in determining the value of property transferred to the MATC or state.

Many property interests are valued by comparison sales. The sales prices of similar property interests are valued by comparison sales. The sales prices of similar property interests sold within the general geographical area and within the same general time period are good indicators of value. This method works well only when there are actual sales of similar property interests. Unfortunately sales less-than-fee, such as rights or easements, are infrequent and not widely publicized.

In cases of less-than-fee interests, the I.R.S. and others have generally determined value by change in value of the remaining property. The value of the property remaining after transfer of the less-than-fee interest is subtracted from the value of the property just prior to the transfer. The difference must be the value of the interest transferred. As a rule of thumb, according to an easement appraiser, the transfer of a property interest which changes the potential use of the remaining property will generally reduce the value of the remaining property by 70 to 80 percent. The value of

the interest transferred is equal to that reduction.

If transfer of property interest merely changes the intensity of use, then the reduction is generally worth 10 to 30 percent of the value of the remaining property.

A restriction placed on property regarding the amount of timber which may be cut in a given period or the number of houses which may be built on a particular property is an example of this property interest. Other types of property interests, although equally valid, may have little current economic value. Examples of these are that structures be architecturally similar, or that bird feeders be maintained, or that rights-of-ways be maintained, or other restrictions similar to zoning ordinances.

Every gift or sale to the state or the Maine Appalachian Trail Club is affected by these tax consequences. The value of these consequences is determined on an individual basis, but in every case the real value is found in the purpose of the organization receiving the gift. In the case of the property given to the Maine Appalachian Trail Club, the value of preserving the wilderness environment of the Appalachian Trail is beyond measure. The tax advantages, although valuable, are barely comparable.

LAND PROTECTION DEVICES

INTRODUCTION

A study of the present legal status of the Appalachian Trail in Maine raises the important issue of securing the Trail for future use. The key to protecting the Trail rests with the way in which the surrounding undeveloped land will be utilized in the future. Without sufficient land use control, the quality of the Trail will be seriously impaired, and its survival threatened.

The term "OPEN SPACE" has been coined to describe a concept which encompasses environmental concerns in the face of increased urban development. As defined in federal legislation, the term "Open Space Land" means *"any undeveloped or predominantly undeveloped land . . . which has value for (A) park and recreational purposes, (B) conservation of land and other natural resources, or (C) historic or scenic purposes."* [17] As a result of much public concern, significant state and federal legislation has been passed in recognition of the above goals.

People walk the Appalachian Trail to discover a natural environment far removed from urban America, as remote as possible from the signs of man's developmental endeavors. It is important, therefore, to insure that this wilderness will not be changed or destroyed. Protection of the Trail is certainly one aspect of "Open Space" conservation and control through appropriate legal and administrative means is essential to its continued use and enjoyment.

There exist a number of legal devices which may be employed to secure the future protection of the Trail, both the physical path itself and the wilderness environment. Used separately or in combination with others according to the specific needs of the Trail, the following methods could be effective tools in negotiating with individual landowners.

A. OUTRIGHT TRANSFER OF LAND OWNERSHIP

1. Definition

The simplest, most direct and most permanent means to protect the Trail would be to acquire title to the corridor and surrounding land in fee simple, or as outright owner. This is accomplished through the familiar vehicle of the deed, the document by which the property interests of the present landowner (the grantor) are conveyed to another (the grantee). To be valid, the deed must be signed by the grantor, delivered to the grantee, and recorded with the county registrar's office.

The scope of the grantee's interest in the land is determined by the physical boundaries described therein and the grantor's property interest being conveyed. The desirability of acquiring full title to the land is immediately obvious. The recipient of the land gains complete control over its use, both present and in the future, subject to any legislative exercise of land-use planning, i.e., zone restrictions, eminent domain or condemnation. Through this device, the grantor relinquishes the right to his land and will no longer play a role in determining its future management.

The concerned landowner who is sensitive to long-term environmental goals could thus achieve a two-fold benefit from this technique: outright transfer in fee to a responsible body not only insures that the land will be properly managed beyond the lifetime of the grantor, but also allows the grantee agency greater flexibility in dealing with problems which may arise in the future.

Not every landowner, however, will be so willing to give up his interest in or use of the land. For those who wish to retain some interest or use of the land, it must be remembered that full acquisition of the land may not be necessary to accomplish the Maine Appalachian Trail Club's objectives of preserving the land in its present natural state. Other techniques which permit the landowner to keep his land will be discussed in later sections.

If the MATC feels that the best means to achieve its

goals would be to acquire full title to the land, then several problems must be considered. First, is the high cost and second is the need to convince the landowner to transfer his land.

2. Methods of Acquisition

a) Purchase

(1) Outright Purchase

Given the high cost of land and the low operating budgets of private conservation groups, the main obstacle to purchasing the land would be in obtaining financial assistance. Following is a list of possible sources; other than private funds.

1) Land and Water Conservation Fund

The Land and Water Conservation Fund is a source of federal assistance to towns, cities and state agencies for planning, acquiring and developing outdoor recreation areas and facilities. Assistance is not limited to the creation of formal parks, but can also be used to preserve open space, provide stream bank access, conserve scenery and the like. The Fund can also be used to protect natural areas.

Acquisitions of less than full title are eligible. That is, the Fund may be used to acquire development rights, access rights, and easements. Two recent examples involve scenic easements in Northampton County, Pennsylvania and similar easements protecting the Appalachian Trail in Virginia. For further discussion, see Case Study Number Four of Case Studies in Land Conservation: New England Natural Resources Center.

(a) Administered by U. S. Bureau of Outdoor Recreation, [18] which wrote to all AT state governors in 1974 encouraging acquisition of the Appalachian Trail

(b) 50/50 matching funds required

(c) acquisition must be in accord with the State's Comprehensive Outdoor Recreation Plan. Maine's Plan is in the process of being revised. It does make reference to hiking and the AT as component parts of the Recreation Plan

2) National Trails System Act (PL 90-543 S10)

Five million dollars has been authorized but not yet appropriated for federal purchase of land or right-of-ways. National Parks System informed our researchers that it plans to make no request for appropriations for specific acquisition of land under this Act, that expenditures from current federal agency operating budgets will be charged against this $5 million authorization, and that it will consider funding pre-acquisition costs incurred for purchase of land under this Act.

3) Possible Sources of State Funds

*The following state agencies are empowered to purchase land. None, however, have any funds available.**

(a) Director, Bureau of Forestry may,

*It is possible for individuals and private groups to donate money to the state or state agencies for the specific purpose of generating matching Federal Funds through the Land and Water Conservation Fund.

with the advice and consent of the Governor and Council, purchase land or accept land as a gift for forest purposes, preservation of scenic beauty and recreation; [19]

(b) Director, Bureau of Parks and Recreation is authorized to acquire by purchase, gift, or eminent domain any land or interest therein with the consent of the Governor and Council. The Director has this power generally and specifically under the Maine Trails System Act with reference to the Appalachian Trail;[20]

(c) The Maine Forest Authority receives funds from time to time as the agency of the State paid by a trust established by the late Percival Proctor Baxter for the purchase of forest lands for recreational and reforestation purposes; [21]
The authority is authorized on behalf of the State to purchase, with the funds paid to it by the above-named trustee and with the moneys realized by the sale of timber in the manner provided, and to accept gifts and devices of real property for recreational and reforestation purposes . . .; [22]

4) Federal Revenue Sharing Funds

These funds can be used by townships or plantations as they see fit. It would be possible for those towns through which the AT runs to purchase land to protect the Trail. This would, of course, require convincing the municipality that this would be the best use of their Revenue Sharing Funds.

(2) Bargain Sale

Definition: the owner sells his land to a tax exempt organization for a price less than its fair market value.

An advantage to the MATC is that it reduces the cost of acquiring a fee simple. While many conservation groups are interested in purchasing the land outright, limitations in the availability of dollars make this form of transaction much more attractive than outright purchase.

Advantages to the landowner:

1) he receives some money for his land

2) he's assured that his land is protected

3) tax benefits: he may deduct the difference between the fair market value of the land and its bargain sale price as a charitable contribution for federal income tax purposes. In order to gain this deduction, the landowner must declare his intention in the sale contract. Another obvious benefit is that the landowner no longer pays property taxes.

"The Bureau of Outdoor Recreation regulations permit states to obtain matching grants for a specific parcel equal to one half the fair market value, determined by competent appraisal. The state pays the difference. The state's contribution, however, abates to the extent the actual sale price is less than the appraisal value. Thus, the landowner who agrees to accept 50% of fair market value (a bargain sale) relieves the state entirely of any contribution of matching funds. In other words, if the MATC would have a qualified professional appraiser determine the fair market value of a land area, the Bureau of Outdoor Recreation would

give the Club a grant equal to 50% of that appraised value and if the owner would agree to donate the remaining 50% of the land's value, the state could acquire the property at no cost to itself.

The gift-purchase approach is attractive primarily to landowners who are in 50% or higher federal income tax brackets because the available tax deduction results in greater tax savings. Lower tax bracket owners may still benefit, however. For appreciated property, the gift portion of the conveyance is deductible up to 30% of the owner's adjusted gross income in the year of the gift and any unused balance may be carried over into the five succeeding years. In the case of a bargain sale, the capital gain attributable to the sold portion increases the allowable charitable deduction, thus increasing the immediate tax savings.

An election to reduce the charitable contribution deduction by 50% of the gain which would have been recognized had the property been sold will enable a donor to deduct charitable gifts up to 50% of his adjusted gross income. In some instances, usually involving either high basis property or a taxpayer who needs a larger contribution base to absorb the charitable contribution deduction, the "50% election" will be available.

In all transactions of this kind, the assistance of tax advisors is essential to full and effective use of technical tax provisions. Such advisors will want to consider the impact of the minimum tax on tax preferences, the use of installment sales provisions and so-called income averaging. Finally, careful investigation is necessary to determine that the landowners held the property for investment and not as dealers primarily for sale to customers.

Bargain sales require appraisals which should be made by highly qualified appraisers. If B.O.R. money is involved, the appraisal must be very complete. The cost to the acquiring agency is usually $1,000 and up. Even when B.O.R. money is

not involved, a complete appraisal to verify the gift to the Internal Revenue Service is essential. Despite the expense involved, an accurate and competent appraisal in which all parties can have faith is essential to the success of a bargain sale since the result of the appraisal provides the financial framework for the transaction." *

(3) Purchase and Leaseback

Definition: a mechanism by which the state, town or other group buys the property from the landowner, who then leases it back for specified uses for a period of years. Through strategic acquisitions the MATC could then apply appropriate restrictions in the lease itself, spelling out the rights and duties of each party and specified remedies in case of breach of contract.[23] This could be used in conjunction with bargain sale, or with outright gift. Even though publicly leased lands are not on the tax roles, maintenance costs can be passed on to the lessee.

There are significant tax consequences if the land is sold to the state and subsequently leased to the original owner. Because the land is owned by the state it is exempt from property taxes. Any rent paid for the use of the land under the leaseback can be deducted if the use is related to a business use or used in some way to produce income. Under these circumstances the owner avoids both property and estate taxes and obtains a potential income tax deduction for rental payments.

*Information quoted from Case Studies in Land Conservation, Case # 3, a project of the New England Natural Resources Center.

The impact of income tax on the sale by the original owner depends on whether the owner sells the land for more than he originally paid for the land. For a discussion of the tax consequences upon selling property interests, see the applicable tax section. If the price that the owner receives is less than the fair market value of the property, then the difference may be characterized as a gift with the tax consequences previously discussed.

Advantage to the MATC - as lessor, the Club may fix quite definitely the subsequent uses of the land.

Disadvantages of this device:

1) problems in getting landowner to sell

2) availability of financial assistance

3) lack of state interest in involvement.

(4) Purchase and Resale

Definition: the land is bought and then resold for private use, but with conditions written into the deed to achieve protection objectives. A primary attraction of this device is that it returns land to the tax roles.

Resale with restrictions regarding future use can be accomplished by the following two methods:

1) reserve an easement (see easement section)

2) include a reverter clause whereby the new owner retains the fee interest (full title) only as long as he follows acceptable agreed-upon uses. If not, then the title reverts to the seller or another specified party.

Not only can a municipality or a governmental unit, utilize this method, but private conservation-oriented groups can follow the aggressive example set by the Maine Coastal Foundation, a non-profit development corporation which acquired land, wrote restrictions on land use into the deed and returned it immediately to the market.

This has the same drawbacks as purchase and leaseback in that seed money is needed to finance purchase of the property. However, it is possible that land taken out of timber production and protected by conservation restrictions, might become even more valuable for sale to private owners, especially if limited residential development, not affecting the Trail, were allowed.

(5) Installment Buying

Definition: a pre-sale contract by which it is agreed to purchase land on a year-by-year basis. Thus, by buying the land on the Installment Plan, the burden of acquisition costs is reduced. An agreement could be worked out with the landowner so that the grantee-agency buys a certain portion of the property each year. During this time, since the owner retains his right to use the land, he must also agree to observe conservation restrictions to that continued use. For organizations like the Maine Appalachian Trail Club it is extremely difficult to raise the entire purchase price in a single year, and this method should be seriously considered.

One advantage to the landowner is that he gets to spread out his capital gains for tax purposes over a number of years. Depending upon recipient and agreement, he could also be relieved of local property taxes.

The seller can also avoid any income tax on income realized by the sale in the year of the sale by spreading the receipt of payments over a number of years. The owner/seller of the property may agree to receive the purchase price in installments. So long as he does not receive more than thirty percent of the purchase price in the first year, he will be able to report the income and pay income tax on only the portion he actually receives. This tax advantage is further described in the Federal Laws in Title II of the Federal Code Annotated, Section 453.

b) Gifts of Land Ownership

The major obstacle to this method is, of course, finding effective ways of appealing to the landowner's self interest and/or generosity. The major attraction of this method is the possibility of tax benefits to the landowner. Coupled with the immediate cancellation of property tax liability, the landowner also receives a break in his income tax liability.

Federal Income Tax laws allow for a deduction from the gross income of the present market value of land given to governmental agencies, public supported charities and private operating foundations. Included within these groups are conservation commissions and private conservation-oriented groups. The MATC does not possess this qualification and, therefore, obtaining this status should be a priority item.

By giving away percentages of the total parcel during the years in which he wants to gain the tax benefit, the landowner may take his deduction in particular years rather than six consecutive years.

There seems to be no easily defined guide which may be used to determine which of the above options should be chosen. Tax benefits should be computed for both in order to insure a maximum tax gain. In many cases, the tax relief gained from a charitable contribution can be quite substantial, and provide an effective negotiating device.

Besides donation of outright ownership, other forms of gifts should be considered:

(1) Life Estate Retained by Landowner

The landowner could maintain his property interests until his death, at which time full title vests in the grantee-agency, such as MATC. In order for the grantee-agency to accomplish immediate conservation goals, agreement with the landowner restricting his continued use of the property to those uses consistent with the agency's objectives would be essential. Property taxes under this arrangement would be paid by the grantee-agency from the time of the gift. The donor may be liable for the estate taxes, unless the MATC volunteered to assume them. Both estate and income tax benefits are possible, but would probably need the advice of a tax attorney to properly design the charitable remainder interest.

(2) Bequests

A strong point here is that testamentary gifts given to a charitable organization are not subject to federal or state estate or inheritance taxes. Since the effect is the same as above (1), however, steps must be taken by which the landowner's present use of his land will not impair conservation objectives.

c) Eminent Domain

The power to take private property for public use has been long recognized. The right of eminent domain is the right of the state and federal government, through regulatory organizations, to re-asset, either temporarily or permanently, its dominion over any land on account of public exigency or for the public good. Thus, in time of war, proper authorities may seize any part of the state's territory for the common safety. In time of peace, the legislature may authorize appropriation of land to further public purposes.

Basically, the principle of eminent domain is simple: the public can acquire property if it will serve a public purpose and if the owner is given just compensation.[24] Much litigation has ensued over the meanings of public purpose, public use, and just compensation. Surely establishment of the well-known Appalachian Trail would be considered a valid manifestation of serving a

public purpose and user-surveys would avoid any issue regarding public use.

The Legislature of Massachusetts has expressly authorized the exercise of eminent domain as a technique to protect the AT in Massachusetts.

132A #12. Appalachian Trail

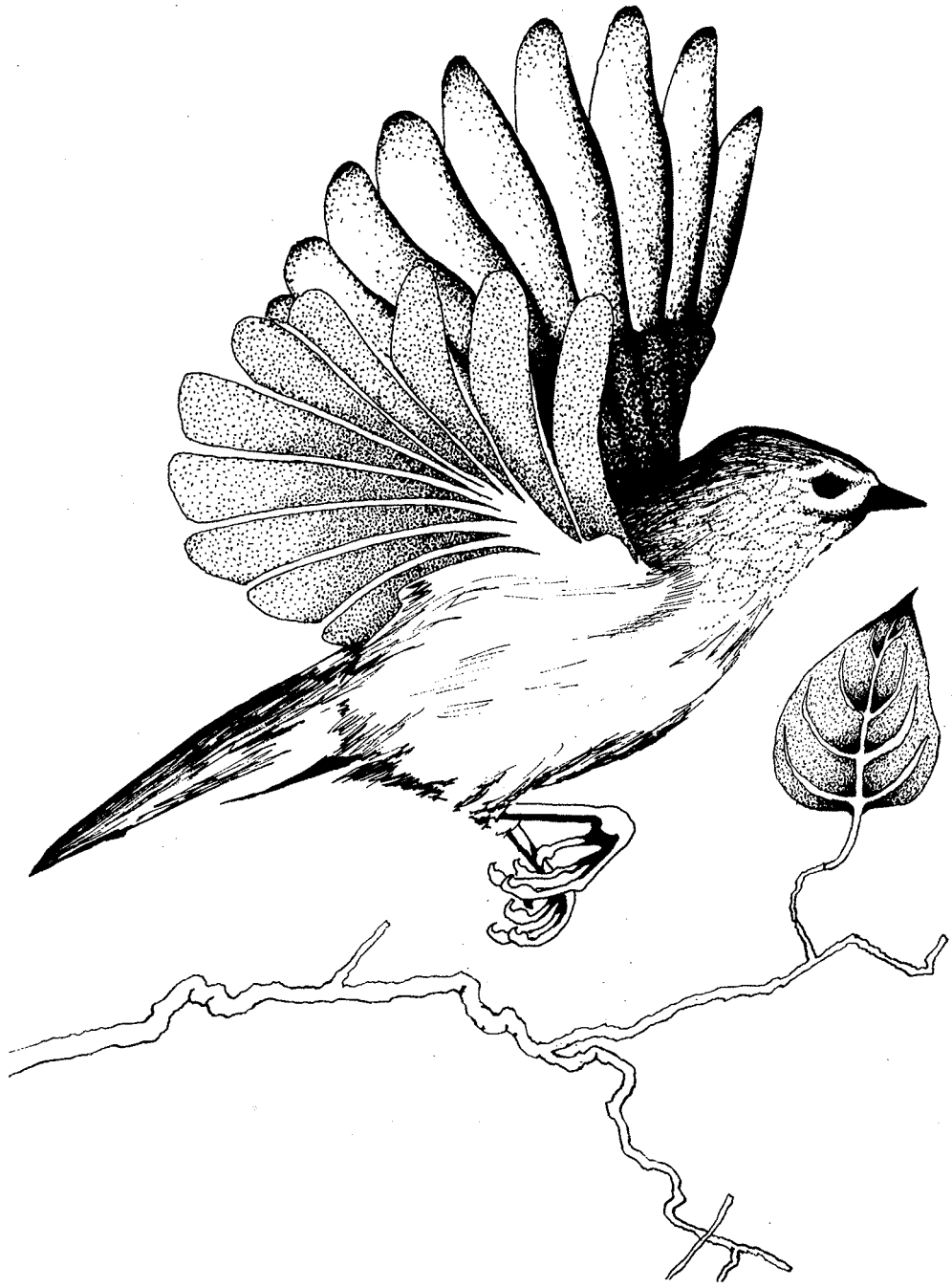
> *The commissioner, on behalf of the commonwealth, may acquire by purchase, gift, eminent domain or otherwise such land, including rights-of-way and easements for the purpose of protecting or enhancing scenic beauty, as he may deem necessary to establish, protect and develop a trail across the commonwealth between the Connecticut and Vermont state line to be known as the Appalachian Trail, and he may provide shelters and other facilities thereon; provided, however, that the power of eminent domain shall not be utilized to acquire a strip of land bordering said trail no greater than two hundred feet in overall width.*

Given the substantial state commitment which would be required in order to acquire full title to land in this manner, serious inquiry must be made into the interest - or lack of it - indicated by Maine state officials. Even if the state is not immediately interested, however, eminent domain remains an effective potential device.

In acquiring property through condemnation, or eminent domain, the public does not have to buy all of it, but that element in it which will serve the public purpose. Therefore, further discussion of this technique is handled under the section regarding part-interest in land, i.e., acquisition of only some of property rights.

It should also be mentioned that eminent domain is hardly a popular land protection device and might cause such adverse public relations for the AT that it should be considered only in cases of extreme need.

In either outright purchase or eminent domain, the owner no longer has to pay property or estate taxes on the property. In outright transfers of land ownership the owner will have to pay income tax on any money made on the transfer. In the event that the owner loses money on the transfer he can deduct the loss on his income taxes.



B. EASEMENTS

1. Definitions

a) In General

At first glance, an easement may appear to resemble a license. Both grant the holder a right to enter someone's else's property for limited purposes. Neither involves the actual transfer of ownership. However, since a license is based on no more than the landowner's permission, it can be revoked at any time simply by the owner's giving such notice as the agreement between him and the holder may require. An easement is not similarly so subject to the owner's whim, although its full legal effect depends partly on what it is called.

Since various forms of easements constitute one of the most promising methods of safeguarding the Trail environment, it is important to understand the rather technical terms used in relation to them.

Easements can be either easements appurtenant or easements in gross. An easement appurtenant is acquired for the benefit of the owner of property adjoining the property subject to the easement. For example, suppose A and B own adjoining properties, but A's only access to a nearby lake is across B's property. If A acquires an easement to cross B's property, A holds an easement appurtenant. Since an easement appurtenant is a benefit only to the owner of adjoining property, it is said to *"run with"* the property. Suppose A later sells his property to C. C then holds A's easement appurtenant. C can cross B's property, but A now cannot. If B prevents C from crossing, C can sue B, but A cannot. An easement in gross is acquired for personal benefit regardless of property ownership. For example, suppose X lives across town, but his only access to the lake is across B's property. If X acquires an easement to cross B's property, X holds an easement in gross. Since an easement in gross is a personal benefit regardless of property ownership, it is said to *"run with"* the person.

Suppose X later moves away and returns only on summer vacations. X still holds an easement in gross and can cross B's property. If B prevents X from crossing, X can sue B.

Both easements appurtenant and easements in gross can also be either affirmative easements or negative easements. An affirmative easement grants the holder the right to do certain acts on the property subject to the easement. For example, the holder of an affirmative easement may have the right to hike or camp on the property. A negative easement grants the holder the right to prevent the owner from doing certain acts on the property subject to the easement. For example, the holder of a negative easement may have the right to prevent the owner from clearing forest or erecting billboards.

It should be apparent from the discussion above that easements can be invaluable tools in protecting the Trail for future use and enjoyment. Since easements in gross do not require the holder's ownership of adjacent land, the MATC is free to acquire rights over property through which the Trail passes without also having to acquire ownership of adjoining property. In addition, easement protection can be tailored specifically to include considerations perhaps unique to a particular portion of the Trail. To insure complete security for the Trail and its users, however, the MATC or the state should acquire both affirmative easements to guarantee access to and use of the Trail and negative easements to forestall adverse development on and around it.

b) Conservation Easements

A conservation easement is a variety of negative easement. It allows the holder to restrict the landowner to certain environmentally compatible uses of the property not inconsistent with other specified rights relinquished by the owner. The holder of a conservation easement is granted neither ownership of the property nor the rights relinquished by the owner. Rather, the holder

acquires the right to enforce the restrictions contained in the easement against the owner (and in most cases all future owners, as well as strangers).

The creation and acquisition of conservation easements is expressly authorized by Maine statute.[25] While the Maine statute does not specifically authorize the acquisition of conservation easements by private groups such as the MATC, similar organizations including the Audubon Societies and the Nature Conservancy have commonly accepted easements without hesitation. So far, there has been no legal challenge to the right of private groups to acquire such easements.

Easements, especially conservation easements, may offer a variety of advantages to both the holder and the owner over other types of land protection devices. A more extensive discussion of these advantages follows in Section 3.

2. Acquisition

a) By Deed

An easement is rarely enforceable unless it complies with the Statute of Frauds, that is, it must be in writing and have been signed by the grantor (i.e., the owner) and the grantee (i.e., the holder). Easements are generally written in deed form and, like deeds, must also be delivered to the grantee and recorded in the local county Registry of Deeds.

Rights acquired by the holder of a written easement are determined by stipulations in the terms of the deed or instrument creating the easement. Therefore, great care should be taken in specifically drafting the the instrument to avoid future uncertainties and

confusion. At the same time, neither party to the agreement need be locked into an inflexible position without regard for possible contingencies or changes in circumstance. For these reasons, many easements expressly provide for amending the terms by mutual consent of the parties.

The typical written easement* begins with a clause or clauses describing the parties, the nature of the agreement, and the property subject to it. The agreement may then proceed to enumerate the restrictions on or uses of the owner's property. Finally, the easement will usually include some method(s) for enforcement of its provisions and a description of the time or duration of the agreement - usually with conservation easements, *"in perpetuity."*

The negotiation and drafting of conservation easements can present some special problems.

First, the grantor should be assured that the agreement in no way transfers ownership or the right to possession of the property. Since this suspicion persists with some owners, it may be advisable to include a statement in the agreement itself to the effect that the owner retains the right to continual use and enjoyment of the property, to eject trespassers, and otherwise to exercise control and possession of the land. Of course, it should be clear that certain activities are prohibited by the restrictions contained in the easement and that the holder may enforce these against the owner.

Second, the grantor may be wary of granting an easement in *"perpetuity."* In this event, the grantor should be informed that certain substantial tax advantages incident to the granting of an easement in perpetuity may be denied the grantor of an easement for a lesser duration. The grantor should also be reminded

*sample easements are found in Appendix G.

of the real commitment and objectives in granting a conservation easement and the probability that at some future time the land will no longer be protected by a conservation easement of finite duration.

Third, the grantor may be reluctant to agree to inflexible easement restrictions without provisions for anticipating change. Again, the grantor should be reminded of the commitment involved and the objectives in granting the easement. However, provision may be included for altering the easement restrictions if the holder should deem proposed changes to be in conformity with its overall conservation purposes. It may also be desirable to provide that the easement automatically becomes null and void if the purpose of the easement becomes inoperative (e.g., the Trail is relocated), or the land is condemned by eminent domain for a public use inconsistent with the purpose. In either event, the owner would be restored to full rights over the property and could command a selling price at full market value.

Fourth, to preserve the conservation restrictions placed on the land, the easement should stipulate that not only the grantor but all successive owners are to be bound by the limitation, unless the easement is to terminate at a specified time. Although older Maine case law [26] still holds that an easement in gross does not bind future owners, the courts can now be expected to uphold application of easements in gross to successive owners if that intent is evinced by the express terms of the agreement. Provision should also be made for the transfer of the holder's right to enforce conservation restrictions to another group in the event that the grantee organization ceases to exist or abandons its basic conservation goals.

b) Purchase

The deed of an easement may be acquired by purchase of the rights to specific uses of the property, or in the case of a conservation easement, by purchase of the rights relinquished by the grantor and the

and the grantee's rights to enforce certain restrictions on the grantor's use of the property. In many cases, the monetary value or purchase price of an easement is difficult to estimate. A real appraisal would consider such factors as the original full market value of the property in contrast to the present value as restricted by a conservation easement. For an affirmative easement, on the other hand, the value of limited uses to the grantee would be of primary concern. While purchase of either affirmative or conservation easements is almost always considerably less expensive than acquiring the property itself, most private groups like the MATC lack the funds to initiate an extensive purchase program and must rely on other methods of acquiring easements.

(c) Gift

Most deeds of easements are acquired by private groups through gifts or donations. Acquisition of easements by this method naturally eliminates expenditures by the grantee, except for expenses which may be incurred in enforcing the agreement. Added advantages to the grantor, including significant tax benefits, are discussed in Section 3.

(d) Will

The deed of an easement can also be included in the owner's will. Most private conservation groups, however, seek present rights over the owner's property and negotiate for an easement during the owner's lifetime. Since a will is not effective to pass property rights until the death of its maker, the actual grant of an easement is uncertain as to the time of creation. Moreover, a will can always be revised before the owner's death and provisions for an easement could be excluded though originally included in the will. Nevertheless, this option is available to the grantor if he should desire to exercise it.

(e) By Prescription

An easement by prescription is acquired by continuous use of the property for at least twenty years under a claim of right (i.e., to use) adverse to the owner, or by such open and notorious, visible and uninterrupted use that the owner's knowledge and acquiescence can be presumed.[27]

By definition, a prescriptive easement involves no deed or writing. Rather, it is founded on the legal presumption that the true owner has given the grantee the right to certain uses by the owner's failure to act in opposition to the grantee's continued use over a certain extended time period.

A prescriptive easement is very difficult to establish or enforce. First, the law requires continued use of the property by an adverse party. Something more then sporadic use must be maintained. Also, the owner's prior grant of a license or written permission to the user precludes recognition of an easement acquired by prescription. Even the owner's oral permission may be sufficient to negate the requisite "adversity" necessary in establishing the grant of a prescriptive easement. Finally, if the grant of a prescriptive easement can be shown, the grantee's rights are limited by the customary uses made of the property during the previous twenty years. In other words, the grantee acquires no other rights not already exercised by continuous use for the required time. For these reasons, prescriptive easements are of little practical value to the achievement of conservation objectives.

3. Advantages of Easements in General

a) to the holder

Easements generally offer numerous advantages to the holder or grantee. Most obvious may be the ability to control or acquire certain uses of property without actually having to purchase it. If an easement is purchased, the cost will undoubtedly be significantly less than the full market value of the property. If acquired by gift, an easement may cost virtually nothing except the relatively small sums which may be required for its mainten-

ance or enforcement. Second, an easement, if in perpetuity, forever binds the grantor and all future owners of the property to respect the rights acquired by the holder. Third, easements make it possible for the holder to develop an overall conservation program suited specifically to a particular area. Fourth, easements permit ownership to remain with the grantor, thus, making an easement a more attractive option from a negotiating point of view than actual transfer of ownership. In addition, the land remains on the property tax rolls, although probably at a lower assessment value.

b) to the owner

Easements can also offer many advantages to the landowner or grantor. An owner who may be particularly environmentally-conscious is able to ensure the continued maintenance of the natural integrity of his property after it has passed to other hands. If so inclined, he may also be contributing to the overall conservation of an environmentally important area while retaining actual control of his own land and the right to convey it to whomever he chooses. A properly drafted easement will also specifically provide for unforeseen contingencies which may alter the owner's interests in using the property or the holder's purpose in enforcing the easement. In this event, renegotiation or termination of an easement may be much less cumbersome than if actual ownership of the property had been transferred.

Among the strongest inducements for granting a conservation easement are the several tax savings available to the landowner. Potential savings to the landowner-taxpayer, upon donation of a conservation easement, may be realized in three specific areas of tax liability: property, income and estate. These provisions, mentioned in the section on Taxes, are further detailed in a Maine Coast Heritage Trust newsletter:

(1) Property Tax

While some Maine property is still not taxed at full market value, there is an increasing tendency to tax land at its highest potential for development, which in most cases would reflect potential sub-division or commercial value. A conservation easement will not take land off the property tax rolls, but may have a stabilizing effect on increases in property taxes. The law which guides local tax assessors in this matter states:

"In the assessment of property, assessors in determining just value are to define this term in a manner which recognizes only that value arising from presently possible land use alternatives to which the particular parcel of land being valued may be put. Assessors MUST CONSIDER the effect upon value of any enforceable RESTRICTION to which the use of the land may be subjected." (Revised Maine Statutes, Title 36, Section 701-A).

The general effect of this law should be that property taxes on easement-protected land will not increase at a rate comparable to taxes on unprotected land. It also provides recourse to landowners in the case of questionable property tax rates. The effect of this law is not likely to be felt in the short term, however, especially in areas where assessments are significantly below current market values.

(2) Income Tax

The Internal Revenue Service allows an individual to deduct the value of a conservation easement which has been donated to a government agency or tax-exempt charitable organization. *(Revenue Ruling 64-205 and Income Tax Regulations, Section 1.170A-7 (b)(1)(ii))*. The value is considered to be the amount by which the conservation easement reduces the market value of the property as determined by a qualified appraiser.

For conservation easements on properties which have appreciated in value, the Internal Revenue Service allows deduction of easement value up to 30% of an individual's adjusted gross income in the year the easement is granted. If the easement value exceeds 30%, the remaining value can be deducted in similar fashion in increments over as much as a five year period within the applicable limitations set forth in the Code.

An alternative method is also available. In the case of an easement on property (held more than 6 months) which has appreciated in value, the taxpayer may elect to deduct 50% of the appreciation allocable to the easement plus the allocable portion of the original "basis". Where this election is made, the taxpayer can take advantage of the larger limitation on charitable deductions - 50% of adjusted gross income. For example, if a conservation easement reduces market value of the property by 20%, the original "basis" in the easement is 20% of the original purchase price of the property (after any relevant adjustments required for tax purposes). Assuming the original cost of

the property was $10,000, the "basis allocable to the easement would be $2,000,($10,000 x 20%). If the property has increased in value to $40,000, the value of the easement then is $8,000,($40,000 x 20%). The appreciation element in the easement is the difference between current value and "basis", or $6,000,($8,000 - $2,000). Electing to deduct 50% of the appreciation element, the owner would then have available a deduction of $5,000, [(50% of $6,000) + $2,000]. As pointed out above, if the taxpayer chooses this method of computing the deduction, the option remains in the succeeding five years to claim any remaining amount of the $5,000 that exceeded 50% of adjusted gross income in the year the easement was given.

(3) Estate Tax

In view of spiraling land values, estate taxes are an important consideration to both the landowner and his heirs. At the time of the owner's death, land is appraised by the government to establish an estate tax. By limiting the commercial potential of land through easement protection, the value of the land for estate tax purposes should be reduced according to the degree of development limits contained in the easement.

Example: At the death of an owner, his property would normally be appraised at its highest developmental potential: $100,000. Earlier, however, he had placed protection on his land which limited its future use to the terms specified in the conservation easement executed. Since the development potential of the land has been reduced by 30%, the appraised value for estate-tax purposes is reduced accordingly. The difference in valuation, $30,000, is excluded from taxable estate and provides considerable tax relief to the heirs.

4. Termination

Naturally, easements, particularly conservation easements, are acquired with the intent that they remain in force for as long as consistent with the holder's purpose(s), often in perpetuity. In certain limited instances, however, easements may terminate or be terminated.

a) by prior agreement

The easement agreement may provide for termination at the expiration of a certain time or upon the assurance of a stated event or contingency (e.g., the owner's death or the holder's attempt to transfer the easement to another). Where termination is provided for by prior agreement, it is nearly always included expressly in the instrument or deed granting the easement. Otherwise, a prior oral agreement to terminate might be extremely difficult to establish.

b) by subsequent agreement

The grantor and grantee may mutually agree to terminate an easement, or the grantor alone might also wish to terminate it for any reason(s) subsequent to the granting of an easement. In either case, the holder must execute a release complying with the Statute of Frauds, that is, in writing and signed by him.

c) by law

Easements may be terminated by operation of law in several relatively exceptional circumstances. If the holder of an easement later acquires actual ownership of the property subject to the easement, the easement is destroyed automatically. If the holder intentionally abandons the rights conveyed by the easement but fails to execute a written release, the the easement may be destroyed upon a proper showing of intent to abandon. If uses made of the land are sufficiently adverse or inconsistent with the purpose

of the easement, termination may occur by prescription, as long as the other statutary requirements for prescription are also met. Finally, if the deed or instrument granting the easement is not properly recorded in the Registry of Deeds and the owner later sells the property to a purchaser who had no notice of the easement, the easement is terminated as of the sale.

5. *"Floating"* Easement

This type of land protection device is not included in the discussion of other easements, as it is still not tested legally. Basically, the concept is to write a negative easement in gross for a section of land that would, after a specified number of years, be *"floated"* to another section of land.

The specified usefulness of this type of easement would be in negotiating with timber companies for an area which is not scheduled to be harvested for, say, ten years. The easement would protect against second home, recreational or commercial development during this time. When the timber was ready for cutting, the Trail would be relocated to another area of immature growth and the easement would move with the Trail.

While this idea offers flexibility and might have special appeal to some landowners, it would require detailed work by a lawyer, and, as we said, has not been upheld as valid in the courts. Also, since the easement would not be in perpetuity, there would be little tax advantage to the landowner.

C. CONSERVATION COVENANTS

1. Definition

A covenant is basically a promise between two or more parties in writing - i.e., a deed.

For example: A group of several landowners get together and agree to perpetual restrictions on further development. Because these legal promises can be enforced by the original parties or successors and bind subsequent owners irrespective of their consent or knowledge, they can be effective land control devices. The problem lies in obtaining the landowner cooperation required.

Covenants running with the land are like private conditions but the remedies for breaching them differ: when covenants are breached, other parties may receive money damages (an action at law) or an injunction - i.e. specific performance (an equity action). The big issue in traditional property law is who may enforce these covenants and against whom?

D. LICENSE

1. Definition

Permission granted by the landowner in the form of a license would be the least secure method to maintain the AT. As defined in a recent Maine case, a license allows its holder to enter the land of another for the purpose of doing a specified act which might otherwise be subject to a charge of trespass. 28

Since the authorization from the licensor does not operate to confer any title, interest or estate in the land, it may be withdrawn at any time, for any reason. Much case law confirms such revocation, leaving the license holder subject to the whim of the landowner. Great care must therefore be taken not to jeopardize this delicate relationship. Because of the personal nature of the privilege, the license may not be assigned. The right of revocation is not limited to the present landowner, however, but may be exercised by a subsequent grantee.29

The differences between a license and an easement, especially one in gross, are often slight, but significant. Both are incorporeal rights which involve no transfer of the land itself but allow the holder to make limited use of the land. As already noted, a license creates no interest in the land, may be created orally, and is revocable. An easement, on the other hand, is a legally enforceable interest in the land, must comply with the Statute of Frauds and is of a more permanent character.

> EXAMPLE: In a jurisdiction which allows an easement in gross to be created orally, A owns Blackacre in fee simple. A permits B to come onto Blackacre for the purpose of fishing from 2:00 to 4:00 on a specific afternoon. If the privilege is at the will of the landowner, then B has a license which A may revoke at any time. If the right to fish from 2:00 - 4:00 creates an irrevocable interest, then B has obtained an easement in gross.

A license must be distinguished from a contract. A contract is always based on a consideration. There may or may not be a consideration for a license.

EXAMPLE: (1) A permits B to come onto A's Blackacre to fish for 2 hours with no consideration involved at any time by A. B has a mere license. (2) A permits B to come onto A's Blackacre to fish for 2 hours for which B pays A $1.00 for the sole purpose of not being considered a trespasser and for no other purpose. (3) A permits B to come onto A's Blackacre to fish for 2 hours and B pays A $1.00 for A's agreement that B may fish for the 2 hours without interruption. B has a license to fish on Blackacre which is revocable but he also has a contract under which A has promised for a consideration not to revoke the license. A has the right and the power to revoke the license as such, but he has only a power but no right to breach the contract and is liable if he does so. Nothing is 'consideration' which is not intended to be such. In such a case it is a question of intention as to what the consideration is for and that is usually a fact question.

Except for the above case involving the underlying contract, the holder of a license has no remedy available for modification or revocation by the licensor. Where the license is to pass across the land of another, the licensee has no action for obstruction or alteration of the way. Herein lies the inherent weakness in employing this mechanism for our purposes, as the status of the Appalachian Trail would remain insecure. Hence, this device should be used only in the event that negotiations are unsuccessful in obtaining more secure techniques.

2. Methods of Acquisition

Because of its nature, a license need not comply with the Statute of Frauds and may therefore be verbal or inferred from the relation of the parties and the circumstances of the case. [30]

A license arises from consent given by the one in possession of the land. Consent being given, then, no prescriptive right can arise through a license. The license itself, however, can be implied from the owner's acquiescence or failure to object when, with full knowledge of the facts, he tacitly permits another to repeatedly do acts upon the land.[31] In the case of an implied public permission, frequent, notorious and continuous use by the public is necessary to raise the inference of acquiescence on the part of the landowner. [32]

The conditions which give rise to irrevocable licenses vary by jurisdiction. According to some authority, a license will be considered in the nature of an easement and cannot be revoked if the licensee has acted under the license in good faith and has incurred expenses and made improvements upon the land.

Although Maine law is silent on this point, the majority rule is that expenditure in reliance on the license will not make it irrevocable unless there is fraud on the part of the licensor.

In some jurisdictions, the fact that a valuable consideration has been paid for the license is sufficient to render it irrevocable. Case law following this point comes generally from the mid-western states.

A license coupled with real property interest, such as that which allows a purchaser of personal property to go on the land to remove his property is generally considered irrevocable as long as that interest continues. On this principle, where one places his property on the premises of another by virtue of a contract on the landowner's permission, a New Hampshire case held that the implied license to enter and remove it is irrevocable. [33]

E. LEASES

1. Definition

Basically leases are legal instruments by which an owner (lessor) of real property sells the use of his land for a specific period of time to a purchaser of that use (lessee) under certain terms and conditions. The interest bought and sold is called an estate.

a) Estate for Years

A leasehold or estate for years arises when a landowner grants to another the right to possess the property for a fixed period of time. The transaction, called a lease, creates a relationship of landlord and tenant, the parties being referred to as lessor and lessee. [34]

Leaseholds involve two areas of law: the law of real property and the law of contracts. In a way, the modern lease is both a conveyance (or transfer of interest in property) and a contract. Not only does it convey a possessory estate to the lessee, but a lease also creates a contractural relationship between the parties. Thus, to lease property is to obtain permission to use and possess the property of another pursuant to a bona-fide agreement.

A lease, then, is a contract under which it is agreed that use for a limited time by the lessee will be followed by a return of the property to the lessor.[35] Because the lessor has transferred less than his entire interest in the land, i.e. his ownership, he is said to have retained a future interest in the land. This future interest is called a reversion because at some future time the right to possession will revert to him.

No technical or formal words are necessary to create a leasehold interest. Because it is the intent of the parties to create a leasehold that is important, such words as *"lease"*, *"landlord"*, or *"tenant"* are merely indicative of such intent and not conclusory. What must be shown is an intention of the lessor to dispossess himself of the premises and to allow the lessee to enter under him for a definite period.[36] Thus, if the intent of the lessor is to allow a mere use and not exclusive possession by the lessee, then the instrument will be considered a license, despite the language used.

b) Estate at Will

A lease which has no specified period of duration is considered to create a *"tenancy at will"*, which is terminable at the will of either the landlord or tenant. Although an estate at will lasts only while both parties wish to continue it, it is an estate because, while it exists, the tenant has an exclusive right to possession. He also may maintain an action for trespass against persons (including the landlord) who interfere with his possession.[37]

Estates at will may be created by an express or implied agreement that the tenancy shall exist only so long as both parties wish it to. A tenancy at will can arise after written lease expires. For example, a tenant who holds over (remains on the premises after the expiration of a written lease) with the consent of the lessor becomes a

tenant at will.[38] Also, by statute in Maine, any lease not in writing amounts to only a tenancy at will.[39]

At common law an estate at will could be terminated by either party without notice whatsoever. Today, in most states, either party wishing to terminate the tenancy must give some formal notice in advance - a time usually equal to the rental payment period. The Maine Statute provides that a tenancy at will may be terminated by either party by giving thirty days notice in writing to the other party.[40]

In addition to termination through statutory notice, the estate will automatically come to an end on the death of either party[41] or through conveyance or lease to a third party.[42] In such cases, the estate comes to an end by operation of law and the statutory notice is not required.

c) Estate at Suffrance

A person who previously held an estate in the land but wrongfully remains in possession after his estate ends, is said to be a tenant in suffrance. He differs from the trespasser only in that his original entry into possession was lawful.

Although there is no Maine case law on point, the general rule is that a lease for even 999 years is still considered as a lease and does not operate to confer any greater estate in the lessee than a leasehold or estate for one year. Thus, the MATC, although acquiring a leasehold for a longer period, would have very little to gain by structuring a lease for a 99 year period. If anything, such a provision would increase the cost of the lease, and the lessor may insist on selling the land outright.

What remedies are available to the lessee in the event of breach by the lessor? Suppose the MATC makes an agreement to lease a section of land along the Trail corridor. Such an agreement gives rise to an exclusive possessory right by the lessee for the period of time specified in the lease. Any interference by the lessor may be enjoined by the lessee, who may also sue for damages. Thus, the lessor would be prevented from obstructing the Trail or altering the land in any way. If the lessor reserves a right to enter and/or cut timber, the character of the transaction has changed and the agreement is no longer considered a lease.

What happens if the landowner-lessor sells the property to a third party?

He or she buys the property subject to the leasehold estate, provided he or she has notice of the existence of said lease. As long as the MATC has recorded the lease, then its leasehold is secure from interference with the new lessor.

2. Method of Acquisition

The Statute of Frauds in Maine now requires that all leases be in writing and signed by the lessor: *"There can be no estate created in lands greater than a tenancy at will . . . unless by some writing signed by the grantor."*[43] Further, if the lease is for a term of greater than two years, or for an indefinite term, it must be acknowledged and recorded in the Registry of Deeds in the county where the property is located. Although some Maine case law requires recording only those leases whose terms exceed seven years,[44] it is generally agreed that the lease will not be enforced against subsequent lessors unless recorded.

When written, the lease instrument should contain the names of the parties, a description of the premises, and the terms of the lease; i.e., times and payment schedule. Although usually incidental to the lease, the reservation of rental payments is not an essential element in creating a valid lease. Following contract theory, the existence of some consideration (payment of some nature) has been required by some states, notably Massachusetts. Maine, however, has not required such consideration since 1936.[45] Since it is unlikely that all landowners could be persuaded to make a gift of a lease to the AT, a major problem to consider will be availability of funds to meet negotiated rental fees.

Other provisions which are common to leases in general and important for the MATC's specific needs include tax liability, maintenance, extensions, options to purchase, and the right to assign its leasehold interest to another entity - e.g., local government or private group. A sample lease is found in Appendix F.

Leases, obviously, lack the permanence of outright acquisition or easements, and for this reason are generally less desirable as a means of achieving the Trail's goals. They do, however, provide legally enforceable rights and should be considered in instances where the other devices cannot be negotiated.

In some cases a formal lease, with its attendant legal fees and possible rental fees, may achieve no more protection than is already granted informally by the landowner. It may still be worthwhile in that it establishes a definite time period during which the AT would remain under the control of the MATC, and any attempt to cancel the lease before the end of the time period could be combatted legally. The clause contained in the existing leases, allowing for cancellation upon six months notice is obviously undesirable.

A formal lease might provide interim protection for a section of Trail in cases where relocation is being considered, or while funds are being raised to purchase the land.

The tax consequences of leases are simple. The lessor, retaining ownership, continues to pay property taxes, although these may be passed on to the lessee in the form of rent. Rents received by the lessor are, of course, counted as income and are taxed accordingly.

F. ZONING

1. Definition

". . . the districting of a municipality into specifically defined areas and the regulation of the construction of buildings and the use of land in those areas."[46] It is a narrower term than planning, which consists of the working out of details for systematic development of growth for the common good of all. All privately owned property is subject to the police power of the sovereign state, the source of the power to zone.

Zoning has become a widely accepted and often used tool in land-use planning. For open space objectives, zoning is often an interim step to more comprehensive protection devices. The question at hand, however, is whether the police power can protect against development in the woods.

The broad application of zoning is to prevent people from using the land in a way which injures the public welfare. It would be complex to prove that the public would be harmed if open space land were developed. However, although conservation measures are difficult to fit into traditional objectives of protecting the general health, etc., preserving wildlife, anti-pollution and other environmental objectives are receiving more favorable treatment these days than they have formerly.

The great majority of the zoning that affects the Trail is done by the Land Use Regulation Commission (LURC), as discussed in a previous section. In a practical sense, there is very little the MATC could do in relation to LURC's function, except be sure that they have full and accurate information about the Appalachian Trail itself and the legislative mandates concerning it.

In those instances where the Trail passes through a township, it might be valuable for a Trail representative - preferably one who lived in the town - to discuss the possibility of incorporating the Trail corridor and its surroundings into the town's zoning plans.

One variation on zoning that might benefit the Trail, although it is still untried, is described in two articles, *"The Preservation of Open Space in Metropolitan Areas,"*[47] and *"Compensable Regulations for Open Space: A Means of Controlling Urban Growth,"*[48] in which the authors put forth a novel technique for the control of open spaces. Their plan, called *"Compensable Regulation,"* is designed to meet the objectives of timing and controlling the character of urban growth through the preservation of open space in private hands. The Maine Appalachian Trail Club is, of course, not primarily concerned with controlling urban growth, but the scheme may be adaptable for preserving the wilderness character of the Appalachian Trail.

The authors saw a need for the new technique in the shortcomings of other familiar land use control devices. Zoning provides no compensation to the affected landowner, thereby making him bear a greater portion of the burden for the resulting public benefit. Zoning regulations must also not extend so far as to amount to a *"taking"* of one's property. Acquisition of development rights or scenic and conservation easements are seen by the authors as too costly (as they require immediate payment) and inflexible. The interest acquired must be defined with particularity, and the acquisition represents a fixed decision by the appropriate governmental agency to deny development. In addition, the community should not have to pay an owner for the value of development rights he may not have intended to realize.

The proposed technique involves a combination of the familiar police power (zoning) and eminent domain approaches. Controls on development are imposed by regulations similar to zoning but with a governmental guarantee that the owner will receive, when he sells his property, a price equal to the value of that property just prior to the imposition of controls. The result is a privately owned (and therefore on the tax rolls), publicly controlled land bank.

2. The Process

a) The whole fee values of properties in the area to be regulated are determined in a manner similar to the valuation of property for purposes of *"just compensation"*

in condemnation proceedings.

b) The appropriate governmental authority guarantees that value to the owner. The guarantee lasts as long as the regulations are in force. Any new owner receives a guarantee, thereby increasing the market for the regulated property. The guarantee is decreased every time some compensation is paid; and when drawn upon, the guarantee is varied by changes in the value of the dollar. To illustrate: P is valued at $10,000 prior to regulations being imposed:

A sells it for $8,000 to B. A receives $2,000 compensation.

B receives a guarantee for $8,000.

If A sold for greater than $10,000, A receives no compensation, and B has a $10,000 guarantee.

c) Detailed regulations are imposed against the guarantee, much in the manner of zoning restrictions. The owner must be prepared to sell publicly, to avoid fraudulent schemes, in order to realize the guarantee. Thus the compensable market value is not subject to conflicting speculative testimony, but to the actual market for the regulated property. Notice that development values not existing at the date controls are imposed are not compensated.

The expected benefits of compensable regulations, according to the authors, are that they:

1. Strike a fair balance between the interests of the individual landowner and those of the community.

2. Cost less to the community in the long run.

3. Avoid concentration of costs during the initial period of regulation.

4. Foster more rational planning through increased flexibility due to amendment provisions for the regulations.

5. Keep the government out of the real estate business as no property interest is acquired.

There are complex constitutional issues involved in this scheme, which are discussed in an article, "*Open Space Zoning: Valid Regulation or Invalid Taking.*"[49] The scheme may have trouble meeting the "public purpose" test; that is, the legislation must be demonstrably necessary and it must be to further a permissible goal of government. Perhaps the constitutional objectives could be avoided by careful legislative drafting.[50]

Beyond the possibility that the technique may not be upheld by the courts, there is the additional disadvantage of the need for appropriate administrative machinery and legislation. Thus a great degree of governmental interest and commitment is a prerequisite. As the position of the Maine Appalachian Trail Club, Inc. is that they wish to negotiate with the landowners, with the State approving and signing whatever agreement is reached, the scheme may be unsuited to the Club's needs. However, the scheme is suited to attaining much greater objectives than other land-use control devices, and for that reason may be of some interest to the Club.

G. CRITICAL AREAS REGISTRY

Another possible method of safeguarding important sections of the Appalachian Trail would be through their inclusion in the *Critical Areas Registry* now being established in the State of Maine.

The *Critical Areas Registry* is a federal project designed to identify and safeguard natural areas that by their uniqueness of exemplary qualities are considered important enough to register. The areas can be noted for wildlife habitat, geological factors, vegetation, scenic nature or any other natural features.

The Critical Areas Registry Board in Maine is still establishing priority standards for inclusion in the registry. In addition to the uniqueness or exemplary quality of the area, such factors as its ecological fagility, and the danger to it that would be incurred through unregulated use are considered.

If, after these priorities and qualifications are established, it is felt that a section on, or affecting the Trail should be entered in the registry, a full description should be sent to the State Planning Office in Augusta.

If, after investigation, the area is registered with the landowner's permission, he must give the Board at least 60 days' notice before altering the area in any way.

While there are now no legal constraints against the alteration of the area, its inclusion in the registry makes the landowner aware of its importance, and his preservation of the land has strong public relations value.

T2R3 BKPEKR
Bald Mountain
PROTECTION AREAS for the APPALACHIAN TRAIL

zone I
zone II
zone III

STANDARD CLASSIFICATION SYSTEM FOR LAND COVER IN MAINE

1110 Hardwood Forest
1120 Softwood Forest
1130 Mixed Growth (Softwood)
1140 Mixed Growth (Hardwood)
3140 Inland Deep Fresh Marsh
4120 Stream (Minor Flowing Water)
4130 Intermittent Brook
5110 Bedrock

Property Boundary

Scale 0 mile

1976 allagash environmental institute

T2 R3 BKPEKR (BALD MOUNTAIN)

BALD MOUNTAIN

BALD MOUNTAIN POND

Bald Mtn

Bald Mountain Pond

Joes Hole

Moxie Bog

Lookout Tower

moxie bald mtn. lean-to

joes hole lean-to

SCOTT PAPER 6.2 mi.

PUBLIC LOT 2.7mi.

gravel road 2.2 mi. (Scott Paper)

BLOWDOWN POTENTIAL

EROSION POTENTIAL

APPALACHIAN TRAIL

SOMERSET CO

BM 996

BM 1223

BM 1253

X 2480

X 1230

1213

3140

4120

4130

5110

1100

1110

1120

1130

1140

USING THE INFORMATION

In order to show how the information contained in this handbook can be used together with the detailed maps also provided to the MATC, we chose a sample section of the Trail on which to work out trial protection methods. The map of this section, and key to the map notations, are found at the beginning of this chapter.

Two points must be stressed. First, the suggestions for appropriate land protection devices are just that - suggestions, and should not be taken as specific recommendations. Second, this project has provided only two of the elements necessary for successful negotiation: specific knowledge concerning the land itself, and information on possible land protection devices that could apply to the Appalachian Trail. Two additional factors are necessary: assessment of the MATC's plans for a given section of the Trail, and as much information as possible about the company with which negotiations are to take place.

It is extremely important for the negotiators to determine the landowner's immediate and long range plans for the section of land under consideration, as well as to have background information on their timbering practices, financial status, chain of command and overall attitude towards environmental considerations and the Trail itself.

For the purpose of this demonstration we have assumed that it is of vital importance to the MATC to secure nearly every foot of the sample section. Actually, it makes sense for the MATC to review the detailed maps and determine a priority list of sections to be secured. Since resources, financial and otherwise, are limited, negotiations should be concentrated on those parts of the Trail most valued by hikers and most in danger of encroachment. A sort of triage process must take place. Time and money should not be expended on those areas where the wilderness quality of the Trail has already been seriously diluted or destroyed; nor on sections where there seems to be no serious danger of development or extensive timbering. The focus should be, at least initially, on protecting those parts of the AT that will, in the next few years, lie in the path of such activity.

The particular section of land was chosen because it contains a variety of situations and protection needs that might be encountered during negotiation. All three protection zones as described in pages 8 & 9 are represented, the terrain itself is varied, the Trail uses a private road at one point, crosses utility

right-of-ways and crosses a Public Lot as well as land owned by a major pulp and paper company. The map should be referred to frequently in relation to this chapter.

The initial two miles of the Trail in this section follow a private road owned by a major paper company. There are a number of private camps located along this road, presumably leased from the company, although this, of course, would have to be confirmed. Since development is already taking place in this area, it seems best that eventual rerouting of the Trail would be most in line with maintaining the wilderness concept. For this reason, permanent protection of this stretch would not be necessary. It would be advisable, however, to insure the continued right of hikers to follow the road until rerouting could be accomplished, especially if this were foreseen to be a matter of years. The simplest way to achieve this would be to obtain an affirmative easement in gross (page 55) for a specified time period. In other words, the MATC would not be asking the company to refrain from any activities along their road, but simply to formalize their permission for hikers to use the road. Since this permission is already in effect, the company may not have any objection to giving this easement without compensation, particularly if MATC offers to assume the legal costs of the transaction.

The AT then leaves the road and curves around the end of a small section of Moxie Lake called Joe's Hole, twice crossing an electric company's right-of-way. Since it would be unreasonable to ask the utility company to cease cutting brush around their lines, the MATC would again be asking only for the simple permission to cross the strip of land controlled by the electric company. A search of MATC files revealed no correspondence with the utility company concerning right-of-ways. If there has been no verbal agreement made either, the possibility of obtaining a prescriptive easement (page 61) is raised, providing the utility lines have been in that location for the statutory amount of time. If this is out of the question, then either a simple license (page 68) or an affirmative easement would be suitable. It might be best to deal with the utility company on an overall basis - obtaining a general permission to cross their right-of-ways rather than working on a case-by-case situation.

As the Trail enters the blazed area it crosses the inlet stream for the pond. This is classified (P-9) by the Land Use Regulation Commission (see Appendix C for description of LURC classifications), affording it general Wetlands protection which should be sufficient for a small, marshy section such as this.

The Trail proceeds through a section of mature hardwood that is of immediate or potential economic value to the company owning the land. As marked on the map, this section would require Zone I (page 8) protection. Since it is a hardwood area, and the

trees are deciduous, the maximum corridor width of 600 feet is needed to maintain its wilderness character in all seasons. The (P-7) zoning of LURC provides protection for only a 200-foot corridor (100 feet each way from the center of the path). In effect, therefore, the MATC is negotiating for additional strips of land, 200 feet in width on either side of the LURC-protected land. As we have previously mentioned, however, (page 11), the realities of political life, and the interim quality of the LURC zoning plan do not make the (P-7) classification an iron-clad assurance of continued protection.

The simplest and best means of protecting a Zone 1 corridor such as this, is outright purchase (page 42) of the entire 600-foot strip of land. In negotiating this, the LURC zoning acts very much to the MATC's advantage. Since the landowner is already, and for the indefinite future, prohibited from utilizing the 200-foot strip in the center, he is in effect only giving up a small amount of productive land, a fact which should certainly be brought to his attention.

Another bargaining point that should be mentioned at this juncture, is the stated willingness of the National Park Service (page 27) to assume pre-acquisition costs for the AT. Surveying strips of lands, and arriving at a fair valuation of their worth is obviously time-consuming and expensive and might deter a company from selling the land. The ability of the MATC to assume these costs might make an important negotiating factor. It should be held in mind that the phrase "pre-acquisition" applies to the purchase of easements as well as full ownership.

If the cost of ownership of the entire 600-foot strip is prohibitive, the MATC might consider purchasing the LURC-zoned strip (already unproductive to the company and possibly obtainable at a very low cost for this reason) and then obtaining, by gift or purchase, a negative easement appurtenant on the land on either side of the corridor. This negative easement could permit selective timber harvesting if it were felt that this would not prove disruptive to the Trail environment.

In this instance, as in all others, knowledge of the needs and plans of the landowner is crucial. If, for example, the MATC felt assured that the company had no plans for timbering in the near future, and that second home or recreational development was not a danger in the area, it might decide to reserve acquisition funds for more crucial sections of the Trail and simply try to acquire an affirmative easement permitting use of the Trail itself. As discussed on page 70, a lease is a possible, although less desirable way of achieving this end.

As the Trail continues its gradual ascent to the top of Bald Mountain, it passes through an irregular area marked for Zone II protection (page 9). In this case, the Zone II classification is necessary to protect two sensitive areas - an upstream water source for the Joe's Hole lean-to and a blow-down area. The water source for the lean-to is a very small stream-flow, and there is no indication that LURC has included it in its P-10 zoning, which protects minor streams. If the fact that this is the only water supply for the lean-to were brought to their attention, they might alter their zoning plan to include it.

Another device that could conceivably come in to play here is eminent domain (page 52). The water source supplying the lean-to could be considered essential to the Appalachian Trail and hence the public good. The MATC, of course, has no power to invoke eminent domain and could only serve as a triggering device to persuade the Bureau of Parks and Recreation that they should use this power for the benefit of the Trail.

The blow-down area to the northwest results from a convergence of air currents, and unless timber-cutting in this section is limited, it poses a threat to the Trail, both scenically and by possible erosion. The problem here is to insure that clear-cutting does not remove the trees necessary to serve as a baffle to the wind currents.

If the Zone I corridor were owned by the MATC, through any of the devices mentioned under Outright Ownership, a negative easement appurtenant might be negotiated to prevent this. Generally speaking, negative easements, which prevent the landowner from using his property in designated ways, are more expensive to obtain than are affirmative easements, which simply allow hikers access to the property. In some cases the possession of such a positive easement may in itself serve to deter other activities: i.e., if the company knows that hikers will be using a certain area, they may refrain from extensive timbering there. These judgments, however, would require a good deal of knowledge of the company's intents and practices.

The Trail itself at this point is winding through predominately softwood growth. The density of the growth and the coniferous nature of the trees make a 600-foot corridor unnecessary to protect the wilderness atmosphere. A 300 to 400 foot width is recommended, but the judgments might be made that the (P-7) corridor of 200 feet might be all that is needed.

Within the Zone II protection area is another water source. This, however, is marked as (P-10), a LURC classification that might be relied on for protection at least temporarily.

The AT continues the ascent, through softwoods, to the top of Bald Mountain. A judgment must be made here, and in many other areas, as to what degree of slope makes timbering, or house-siting impractical per se, thus making additional protection unnecessary. A study of harvesting practices and a review of the Site Selection Law could determine this, although it should be held in mind that technical advances in timber management might change things in the future.

As the Trail nears the top of Bald Mountain the trees thin out and an area of bare ridgeline is reached which continues to the summit of the mountain. From the top of Bald Mountain there is a panoramic view encompassing miles of valuable timberland, rivers and desirable lake frontage on Bald Mountain Pond. A view such as this, reached after a long climb, is one of the peak experiences of the AT; protecting it is the most complex and difficult goal to achieve.

The primary task is to obtain permanent use of the Trail corridor itself in such an essential location. A ridgeline itself is of no commercial value to a pulp and paper company, and it is in instances such as this that an outright gift (page 50) seems feasible. While the financial loss to the company resulting from such a gift is negligible, so are the tax advantages that they gain. Here again, the ability of the MATC to handle the details of the transaction become important.

If negotiations for a gift fail, bargain sale (page 45) becomes an alternative. In either case, the public relations benefits to the company from donating the Trail corridor should be stressed.

If full purchase of the corridor is necessary, the following procedure might be used, assuming that the MATC itself does not have available funds. An individual, or organization could be contacted that had a known interest in the AT. Since the ridgeline property is not in itself valuable to the landowner, a strip of several miles might be purchased for a sum that is not beyond the means of the individual or organization. After buying the Trail corridor from the company, the new owner would then donate the section to the MATC or Appalachian Mountain Club. Two advantages accrue to the donor: first, he will be able to deduct 50% of the cost of the land as a charitable contribution. Second, the MATC might make public recognition of the donor's generosity, both by issuing a press release describing the transaction and, perhaps by making mention in the Guidebook that this section has been secured by the donor.

Once the Trail itself is protected, however, the problem still remains of assuring that the view is not despoiled by evidences of man's activities. Purchase of such a large area - we are speaking here of perhaps 50 square miles - is obviously impossible. It is also unreasonable to expect the company to abandon all activity on such valuable land.

A conservation easement (page 56) seems the best device to achieve the goal of protecting the wilderness character of a large tract of land, designated as Zone III. Tailoring the easement to meet both the needs of the landowner and the goals of the AT would require foresight and sensitivity. As mentioned previously, the Maine Coast Heritage Trust has offered to assist in this process.

An easement protecting the view from Bald Mountain might, for example, prohibit additional permanent roads, construction of buildings over one story in height, housing density more than a certain level, clear cutting of areas more than a given size, borrow pits and mining activities. It would be made clear that normal timber management could be continued, a specified number of camps could be constructed and temporary roads put in to remove timber.

While the gift of such an easement is of course most desirable, purchase might be necessary. In a situation where the easement would cover many acres of land, the tax advantages may become important, even when the land is under the Tree Growth Tax (page 32). It might be useful for the MATC to arrive at estimates of the tax savings that might be realized and to use these figures in negotiating.

There are certain circumstances in which a conservation easement on one section of land increases the value of the adjoining land. For example, limited second home development might be planned near Bald Mountain Pond that would not, considering the distance from Bald Mountain peak and the density of softwood growth, be disruptive to the Trail's view. If the land between the second home area and the Trail corridor were under an easement prohibiting additional development and intensive timbering, it could well make the second home land more valuable to potential purchasers. It should be remembered that people buying land for camps in the unorganized territory are themselves concerned with protecting the wilderness atmosphere. Such a potential advantage should be foreseen by the negotiators and brought to the company's attention.

A form of conservation easement which has been used in other states is a scenic easement - essentially a negative easement in gross in which the prohibitions are specifically designed to protect the scenic quality of the area. A sample scenic easement is found in Appendix G. Scenic easements should be specific in nature and avoid relying on general phrases such as "preserve the natural beauty", as differences in interpretation of this can lead to continual litigation.

Failing negotiation of an easement protecting the entire area, strategic acquisition might be used. Under this plan, the MATC would select and purchase those areas most likely to be developed: lake or river frontage or high ground. Once these were owned, they could be protected with restrictive covenants and put back on the market as described under Purchase and Resale (page 48), with possible profit to the MATC, or a land-holding corporation formed for this purpose.

Descending Bald Mountain, the Trail skirts the edge of Bald Mountain Pond, where the system of permissions and licenses granted under the Great Ponds Act[51] provides at least partial protection from adverse development.

The Trail then enters a designated Public Lot. The Bureau of Public Lands (page 12) recognizes the Appalachian Trail as an important part of Maine's recreation system, and there seems little danger that the use of the Trail corridor would be curtailed in a Public Lot. It would be to the MATC's advantage, however, to go over the detailed maps with Bureau personnel and make sure they are aware of the Zones indicating the needs of the Trail. There may be cases where a Zone III area is being considered for other uses that might detract from the wilderness atmosphere. In such cases an accommodation would have to be reached with the Bureau.

This capsule review of possible land protection devices does not exhaust the possibilities - the MATC may have to fall back on the protection of weaker licenses or leases.

Again, we cannot stress too strongly the responsibility of the negotiators to have as full a knowledge as possible of the needs and plans of the landowners, individual or corporate. Only by working with the landowners can complete and permanent protection for the Appalachian Trail be achieved.

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FOOTNOTES

1. Landowners who have signed a "Memorandum of Agreement for the Promotion of the Appalachian Trailway:"

   Diamond International Corp.
   Bronson W. Griscom
   Great Northern Paper Company
   Hudson Pulp and Paper Corp.
   International Paper Company
   Oxford Paper Company
   St. Regis Paper Company

2. -Brown Company Eastern (who also lease to the state three one-quarter acre parcels for shelters)
   -Heirs of David Pingree (land held jointly with Brown Company, and managed by Seven Islands Land Company; lease includes one one-quarter acre parcel for a shelter)
   -Scott Paper Company

   There is also a lease with Central Maine Power Company for a parcel of land of sufficient size to contain one lean-to in Bowtown, Somerset County. The Maine Appalachian Trail Club is leasee of that parcel.

3. "In order to provide for the ever-increasing outdoor recreation needs of an expanding population and in order to promote public access to, travel within, and enjoyment and appreciation of the open-air, outdoor areas of the Nation, trails should be established . . . The purpose of this chapter is to provide the means for attaining these objectives by instituting a national system of . . . scenic trails by designating the Appalachian Trail . . . as the initial components of that system . . ." 16 U.S.C.A. §1241, P.L. 90-543, § 2, October 2, 1968, 82 Stat. 919.

4. "The Director for the Bureau of Parks and Recreation shall establish trails on state-owned lands and encourage the establishment of trails on private lands by governmental agencies and private organizations. The

director is authorized to . . . acquire such interests in land as may be necessary to establish and protect trails . . . The Maine Trails System shall consist of . . . primitive trails . . . The Appalachian Trail shall be included as a primitive trail in the Maine Trails System . . ." 12 M.R.S.A. § 602(15).

5. ". . . Condemnation proceedings may not be utilized to acquire fee title or lesser interests to more than twenty-five acres in any one mile and when used such authority shall be limited to the most direct or practicable connecting trail right-of-way . . ." 16 U.S.C.A. § 1246(g).

6. 16 U.S.C.A. § 1246(h).

7. 16 U.S.C.A. § 1246(h).

8. Agreement is set out in full and may be obtained from the National Park Service.

9. 12 M.R.S.A. 602(15)(B).

10. 12 M.R.S.A. § 602(15)(A).

11. 12 M.R.S.A. § 602(15)(A).

12. If all reasonable efforts to acquire lands or interests therein by negotiation have failed, and public exigency requires it the director may, with the consent of the Governor and Council, utilize the power of eminent domain to acquire such land as is deemed necessary to provide passage via the most direct or practicable connecting trail right-of-way across such lands; provided, that not more than 25 acres in any one mile may be acquired without the consent of the owner. 12 M.R.S.A. § 602(15)(A).

13. The Director for the Bureau of Parks and Recreation shall establish trails on state-owned lands and encourage the establishment of trails on private lands by governmental agencies and private organizations . . . The

director may enter into agreements with private organizations and governmental agencies to provide for the maintenance of established trails. Local and regional governmental agencies are encouraged to assume the primary responsibility for the establishment, maintenance, and administration of local trails. 12 M.R.S.A.§602(15)(A).

14. 30 M.R.S.A. §4151

15. 12 M.R.S.A. §681 ff.

16. Areas to be included within Interim (P-7) Protection Subdistricts: Areas that provide significant primitive recreational opportunities including but not limited to areas necessary to provide an effective visual and acoustical buffer zone on a continuing basis for significant primitive trails and in no case shall the interim (P-7) Protection Subdistrict include less than the area within 100 feet of such trails.

    Standards for Interim Land Use District Boundaries and Permitted Uses of the Maine Land Use Regulation Commission as revised August 10, 1973, p. 14.

17. Title VII - Open Space Land (75 Stat. 149)
§ 701-706 1961

18. B. O. R. Regional Offices at Rm 9310, 600 Arch Street, Philadelphia, PA 19106.

19. The Director of the Bureau of Forestry may, with the advice and consent of the Governor and Council, purchase land or accept land as a gift for forest purposes, preservation of scenic beauty and recreation; 12 M.R.S.A. § 512.

20. The Director of the Bureau of Parks and Recreation is authorized through 12 M.R.S.A. § 602.

21. 12 M.R.S.A. § 1701.

22. 12 M.R.S.A. § 1702.

23. Ottowa Green Belt Program - 1958. Maryland National Cap. Parks and Planning Com.

24. 12 M.R.S.A. § 602.

25. 33 M.R.S.A. § 667, 668.

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49. Jon A. Kusler in 57 Minnesota Law Review, p. 1 (1973).

50. See the Draft Open Space Act, 110 U. Pa. L. R. p. 218 and the Appendix, 29 Journal of the American Institute of Planners, p. 95, where the authors discuss these problems.

APPENDIX A

Questionnaire

Appendix A

APPALACHIAN TRAIL USERS SURVEY

Section of Trail:_____ Date:_____

Hiker's Planned Trip_____

HOW OFTEN DO YOU HIKE SECTIONS OF THE TRAIL?

a. First time - 8
b. Occasionally - 4
c. Once or twice a year - 6
d. More than that - 20

SIZE OF GROUP:

a. Hiking alone - 6
b. Two in a group - 3
c. 3 to 5 in a group - 7
d. More than 5 - 2

AGE OF HIKERS:

a. Under 18 - 9
b. 18 - 25 - 23
c. 26 to 35 - 7
d. 36 to 50 - 0
e. Over 50 - 0

HOME LOCATION OF THE HIKER:

a. Within 25 miles of trail - 0
b. Maine, more than 25 miles away - 20
c. Out of state: has vacation home - 4
d. Out of state: no vacation home - 14

GENERALLY SPEAKING, HOW WOULD YOU CHARACTERIZE THE ENVIRONMENT SURROUNDING THE A.T. IN MAINE?

a. Wilderness - 4
b. Semi-Wilderness - 29
c. Managed Forest - 1
d. Semi-Developed - 0
e. Don't Know - 0

DO YOU FEEL THAT THE LAND AROUND THE TRAIL IS MANAGED?

a. Very well - 14
b. Well - 17
c. Fair - 5
d. Poorly - 0

HOW CLOSE TO THE TRAIL DO YOU THINK HOUSES OUGHT TO BE ALLOWED?

a. Anyplace - no restriction-0
b. Not within 100 feet - 0
c. More than 200 feet away - 4
d. More than a quarter mile- 9
e. Anyplace as long as they cannot be seen from the A.T. - 23

A-1

HOW CLOSE TO THE TRAIL DO YOU THINK LOGGING OPERATIONS SHOULD BE ALLOWED?

a. Anyplace - no restriction-0
b. Not within 100 feet - 4
c. More than 200 feet away-4
d. More than a quarter mile-15
e. Anyplace as long as they cannot be seen from the A. T. - 11

DO YOU BELIEVE THAT THE ENVIRONMENT DIRECTLY ALONG THE A.T. SHOULD BE LEFT IN A TOTALLY WILDERNESS STATE, OR SHOULD BE MANAGED LIKE THE REST OF THE FOREST?

a. Wilderness state - 35
b. Managed with the rest of the forest - 1

IN ORDER TO CONTINUE USING VALUABLE TIMBERLANDS FOR THE ROUTE OF THE A.T., WOULD YOU BE WILLING TO USE A PORTABLE CAMPING STOVE RATHER THAN AN OPEN WOODBURNING FIRE?

a. Yes, at all times - 30
b. Yes, when fire danger is high - 6
c. No, not at all - 0
d. No opinion - 0

DO YOU FEEL THERE SHOULD BE GREATER ACCESS TO THE A.T., LESS ACCESS OR THAT THE ACCESS IS ADEQUATE?

a. Greater - 9
b. Less - 4
c. Adequate - 17
d. Don't know/no opinion - 0

DO YOU THINK THAT MORE SIDE TRAILS OR ALTERNATIVE ROUTES SHOULD BE DEVELOPED ALONG THE TRAIL?

a. More side trails - 25
b. More alternative routes - 0
c. More of both - 0
d. No more of either - 13

CAN YOU SUGGEST ANY SIDE OR ALTERNATIVE TRAILS?_____

_____

HOW DO YOU FEEL THE A.T. CAN BE IMPROVED IN OTHER WAYS?_____

_____

_____

_____

APPENDIX B

Description of State Agencies

STATE DEPARTMENTS

RELEVANT TO

THE MAINE APPALACHIAN TRAIL

Department of Conservation - 12 M.R.S.A. Sec. 5011

Commissioner - appointed by Governor with advice and consent of the Council.

Chief executive officer of the Department of Conservation coordinates and supervises activities and programs of bureaus and agencies that are part of the department's comprehensive planning and analysis.

Bureaus and Agencies

1. Land Use Regulation Commission - 12 M.R.S.A. Sec. 681 et seq

2. Bureau of Forestry - 12 M.R.S.A. Sec. 501 et seq
   Director appointed by the Commissioner with approval of the Governor

3. Bureau of Parks and Recreation - 12 M.R.S.A. Sec. 601
   Director appointed in the same manner

4. Bureau of Public Lands
   Director appointed in the same manner

5. Bureau of Geology

Director, Bureau of Forestry - 12 M.R.S.A. Sec. 501

Organization - Maine Forest Service

1. Forest Management
2. Wood Products
3. Reforestation
4. Insects and Diseases
5. Fires
6. Educational Information
7. Geological Survey

Sec. 504 All lands owned by the state - not otherwise provided for by law - are under the supervision and control of the Commissioner of Conservation.

Sec. 508 Commissioner has power to execute deeds.

Sec. 512 Director may, with advice and consent of the Governor and Council, purchase land or accept land as a gift for forest purposes, preservation of scenic beauty and recreation.

--Type of land with which our project is concerned, clearly is included by this provision.--

Sec. 513 Bureau is designated to accept federal, public and private funds.

Sec. 514 Commissioner has same power to manage lands specified in Sec. 504 as he does to manage public reserved lots - 30 M.R.S.A. 4162(4).

B-2

Bureau of Parks and Recreation - 12 M.R.S.A. Sec. 601

Sec. 602 Powers

Jurisdiction, custody and control in, over and upon all state parks under control and management of the state, except Baxter.

1. To acquire by purchase, gift, or eminent domain and to convey any land or interest therein with consent of the Governor and Council.

2. Study and report to Governor and Council the state's actual and potential outdoor recreational facilities and the needs of the people.

3. Rules and regulations for parks

4. Fees for services

5. Police supervision

6. Control of fires

7. Lease agreements with the U. S.

8. Cooperation with federal agencies

9. Receive federal funds

10. Maine Trails System - specifically includes Appalachian Trail as a "primitive trail" to be protected. Director is authorized to negotiate and acquire such interests as necessary to establish and protect such trails. Appoint a Maine Trails System/Advisory Committee.

Land Use Regulation Commission (L.U.R.C.) - 12 M.R.S.A. Sec. 681

Sec. 681 Purpose

Extend principles of sound planning, zoning, and subdivision control to the unorganized and deorganized townships of the state...to preserve ecological and natural values...in pursuit of outdoor recreation activities, including but not limited to ...hiking and camping.

Sec. 683 The Commission

A. Four permanent members:
   1. Director of the Bureau of Parks and Recreation
   2. Director of the Bureau of Forestry
   3. State Planning Director
   4. Commissioner of the Department of Conservation - or alternates permanently designated.

B. Four members serving staggered four-year terms to be appointed by the Governor with advice and consent of the Council.

C. Two public members:
   1. Representing conservation interests
   2. Representing industry interests

Sec. 684 Officers, meetings, rules, hearings

A. Annually elect officers

B. Meetings at call of one-half of membership; at least once publically a month

C. May promulgate rules and regulations as necessary.

D. Hearings shall be held with record made and finding of fact reported.

Sec. 685 - A

Sets up land use standards, classification and districting of land, and hearings and procedures for implementation.

Sec. 685 - C

Interim comprehensive land use plan for the unorganized and deorganized townships in the state by 1 January 1975.

Prepare a land use guidance and planning manual and distribute.

Adopt rules to carry out the chapter.

Bureau of Public Lands - 12 M.R.S.A. Sec. 5013(4)

12 M.R.S.A. Sec. 5013(4) - The Bureau is set up as one of the member bureaus or agencies contained in the Department of Conservation with overall control by the Commissioner of Conservation. The Director is appointed by the Commissioner with the consent of the Governor.

12 M.R.S.A. Sec. 5014 - The Commissioner may delegate to the Director any of the powers, duties, rights, responsibilities, liabilities, and functions of the Commissioner.

12 M.R.S.A. Sec. 504 - All lands owned by the state, including the Public Reserved Lots - not otherwise provided by law - are under the supervision and control of the Commissioner.

12 M.R.S.A. Sec. 514 - The Commissioner has the same powers, subject to the same conditions with respect to the management of lands specified in Sec. 504, as he has with respect to the public reserved lots.

30 M.R.S.A. Sec. 4151 - The Commissioner of Conservation is directed to manage and preserve the Public Reserved Lots.

30 M.R.S.A. Sec. 4162(4) - A detailed description of the management practices which the Commissioner oversees.

APPENDIX C

L U R C /Classifications

1. **Uses Permitted Without Review and Approval Within Interim (P-2) Protection Subdistricts**
   The following uses shall be permitted without review and approval within Interim (P-2) Protection Subdistricts, to the extent they are compatible with the resources or values protected:
   a. Primitive recreational uses, including fishing, hiking, hunting, wildlife study and photography, wild crop harvesting, trapping, horseback riding, tent and shelter camping, canoe portaging, cross country skiing and snowshoeing;
   b. Motorized vehicular traffic on roads and trails, and snowmobiling;
   c. Forest management activities including timber harvesting; agriculture, fire prevention activities, wildlife management practices, and soil and water conservation practices;
   d. Mineral exploration to determine the nature or extent of mineral resources provided such exploration is accomplished by hand sampling, test boring, or other methods which create minimal disturbance;
   e. Land management road construction;
   f. Surveying and other resource analysis; and
   g. Emergency operations conducted for the public health, safety or general welfare, such as resource protection, law enforcement, and search and rescue operations.
2. **Uses Permitted Upon Review And Approval Within Interim (P-2) Protection Subdistricts**
   The following uses shall be permitted upon review and approval, pursuant to Title 12, M.R.S.A., Section 685-B, within Interim (P-2) Protection Subdistricts:
   a. Principal and accessory structures or buildings and essential services as may be necessary for the exercise of uses listed in Section 221, II, B, 1.

III. **Interim (P-3) Protection Subdistricts And Land Use Standards**

A. **Areas To Be Included Within Interim (P-3) Protection Subdistricts**
   Areas within two hundred and fifty feet of the normal high water mark, measured as a horizontal distance landward from such high water mark, of sizeable non-tidal bodies of standing water (lakes and ponds), sizeable non-tidal flowing waters (rivers and streams), and tidal waters—all terms as defined in Section 220.

B. **Land Use Standards Applicable To Interim (P-3) Protection Subdistricts**
   1. **Uses Permitted Without Review And Approval Within Interim (P-3) Protection Subdistricts**
      The following uses shall be permitted without review and approval within Interim (P-3) Protection Subdistricts, to the

extent they are compatible with the resources or values protected:

a. Primitive recreational uses, including, fishing, hiking hunting, wildlife study and photography, wild crop harvesting, trapping, horseback riding, tent and shelter camping, canoe portaging, cross country skiing, and snowshoeing;

b. Motorized vehicular traffic on roads and trails, and snowmobiling;

c. Fire prevention activities, wildlife management practices, and soil and water conservation practices;

d. Mineral exploration to determine the nature and extent of mineral resources provided such exploration is accomplished by hand sampling, test boring, or other methods which create minimal disturbance;

e. Surveying and other resource analysis;

f. Emergency operations conducted for the public health, safety or general welfare, such as resource protection, law enforcement, and search and rescue operations;

g. Agriculture when in conformance with the standards listed below:

(1) All spreading or disposal of manure shall be accomplished in conformance with the "Maine Guidelines for Manure and Manure Sludge Disposal on Land" published by the University of Maine and Maine Soil and Water Conservation Commission, on July 1972 or subsequent revisions thereof.

(2) No more than a 1/2 acre area of soil is tilled in any year.

(3) Agricultural practices shall be conducted in such manner to prevent soil erosion, sedimentation, and contamination or nutrient enrichment of surface waters.

h. Forest management activities including timber harvesting when in conformance with the standards listed below:

(1) Written notice of all timber harvesting operations shall be given to the Commission prior to the commencement of on the ground operations. Such notice shall state the location, nature, and time period of harvesting operations; and may be combined with the notice required by other sections of this chapter.

(2) Harvesting operations shall be conducted in such a manner that a well-distributed stand of trees is retained.

(3) Harvesting activities shall not create single openings greater than seven thousand five hundred (7,500) square feet in the forest canopy.

(4) In any stand, harvesting shall remove not more than forty (40) percent of the volume of trees six (6) inches in diameter and larger measured at four and one-half (4-1/2) feet above ground level, in any ten (10) year period. Removal of trees less than six (6) inches in

diameter, measured as above is permitted in conformance with provisions (2), (3), (5), (6) and (7) of this subsection. For the purpose of these standards, a stand means a contiguous group of trees, sufficiently uniform in species, arrangement of age classes, and condition, to be identifable as a homogeneous and distinguishable unit.

(5) No substantial accumulation of slash shall be left within fifty (50) feet of the normal high water mark of surface water areas protected by these districts. At distances greater than fifty (50) feet from the normal high water mark of such waters and extending to the limits of the Interim (P-3) Protection Subdistricts, all slash shall be disposed of in such a manner that it lies on the ground and no part thereof extends more than four feet above the ground.

(6) Skid trails, log yards, and other sites where the operation of logging machinery results in the exposure of substantial areas of mineral soil should be located such that an unscarified filter strip is retained between the exposed mineral soil and the normal high water mark of the surface water areas protected by these districts. The width of this strip should vary according to the average slope of the land as follows:

Average Slope of Land Between Exposed Mineral Soil and Normal High Water Mark (Percent)	Width of Strip Between Exposed Mineral Soil and Normal High Water Mark (Feet along Surface of the Ground)
0	25
10	45
20	65
30	85
40	105
50	125
60	145
70	165

(7) Harvesting operations shall be conducted in such a manner and at such a time that minimal soil disturbance results. Adequate provision shall be made to prevent soil erosion and sedimentation of surface waters.

Construction of land management roads and minor land management road crossings of watercourses as defined in Section 220 when in conformance with the standards listed below:

(1) Written notice of all land management road con-

struction projects shall be given to the Commission prior to the commencement of on the ground operation. Such notice shall state the location, nature, and time period of such projects; and may be combined with the notice required by other sections of this chapter.

(2) Land management roads shall be located, constructed, and maintained in such a manner that minimal erosion hazard results. Adequate provision shall be made to prevent soil erosion and sedimentation of surface waters. All land management roads shall be located, constructed and maintained in conformance with the erosion preventative provisions of "Permanent Logging Roads for Better Woodlot Management" published by the Division of State and Private Forestry, Forest Service Northeastern Area, U.S. Department of Agriculture in 1960 or subsequent revisions thereof.

(3) Additionally, all land management roads constructed shall conform with the following standards:

(a) Land Management road crossings of watercourses shall be kept to the minimum number necessary;

(b) Bridges or culverts of adequate size and design shall be provided for all land management road crossings of watercourses which are to be used when surface waters are unfrozen;

(c) Bottoms of culverts shall be installed at streambed elevation; and

(d) All cut or fill banks and areas of exposed mineral soil in the immediate vicinity of watercourses shall be revegetated or otherwise stabilized.

(4) Whenever practicable land management road crossings of watercourses should be constructed during periods of low flow, normally July and August. It is especially important that construction of land management road crossings of watercourses be avoided between October 1 and November 30 on trout and salmon waters or their tributaries.

2. **Uses Permitted Upon Review And Approval Within Interim (P-3) Protection Subdistricts**

The following uses shall be permitted upon review and approval within Interim (P-3) Protection Subdistricts, pursuant to Title 12, M.R.S.A., Section 685-B:

a. Principal and accessory structures or buildings and essential services as may be necessary for the exercise of uses listed in Section 221, III, B, I;

b. Agricultural practices which exceed the limits of the standards for such use listed in Section 221, III, B, 1, including the tilling of an area of soil in excess of one half acre in any year in conformance with a soil conservation plan;

c. Timber harvesting activities which exceed the limits of

the standards for such use listed in Section 221, III, B, 1; and

d. Land management road construction activities which exceed the limits of the standards for such use listed in Section 221, III, B, 1, and major land management road crossings of watercourses as defined in Section 220 and other land management road crossings of watercourses, which exceed the limits of the standards for such use listed in Section 221, III, B, 1.

IV. **Interim (P-4) Protection Subdistricts And Land Use Standards**

A. **Areas to be included within Interim (P-4) Protection Subdistricts**
Areas significant in maintaining populations of wildlife and fish species.

B. **Land Use Standards Applicable To Interim (P-4) Protection Subdistricts**

1. **Uses Permitted Without Review And Approval Within Interim (P-4) Protection Subdistricts**
The following uses shall be permitted without review and approval within Interim (P-4) Protection Subdistricts to the extent they are compatible with the resources or values protected:

a. Primitive recreational uses, including fishing, hiking, hunting, wildlife study and photography, wild crop harvesting, trapping, horseback riding, tent and shelter camping, canoe portaging, cross country skiing, and snowshoeing;
b. Motorized vehicular traffic on roads and trails, and snowmobiling;
c. Forest management activities except for timber harvesting; fire prevention activities, wildlife management practices, and soil and water conservation practices;
d. Mineral exploration to determine the nature or extent of mineral resources provided such exploration is accomplished by hand sampling, test boring, or other methods which create minimal disturbance;
e. Surveying and other resource analysis; and
f. Emergency operations conducted for the public health, safety or general welfare, such as resource protection, law enforcement, and search and rescue operations.

2. **Uses Permitted Upon Review And Approval Within Interim (P-4) Protection Subdistricts**
The following uses shall be permitted upon review and approval, pursuant to Title 12, M.R.S.A., Section 685-B, within Interim (P-4) Protection Subdistricts:

a. Principal and accessory structures or buildings and essential services as may be necessary for the exercise of uses listed in Section 221, IV, B, 1;
b. Timber harvesting, agriculture; and
c. Land management road construction.

law enforcement, and search and rescue operations.

2. **Uses Permitted Upon Review And Approval Within Interim (P-6) Protection Subdistricts**
   The following uses shall be permitted upon review and approval, pursuant to Title 12, M.R.S.A., Section 685-B, within Interim (P-6) Protection Subdistricts:
   a. Principal and accessory structures or buildings and essential services as may be necessary for the exercise of uses listed in Section 221, VI, B, 1;
   b. Alpine skiing to the extent it involves only the construction of lifts, trails and warming huts;
   c. Timber harvesting, agriculture; and
   d. Land management road construction.

VII. **Interim (P-7) Protection Subdistricts And Land Use Standards**

A. **Areas To Be Included Within Interim (P-7) Protection Subdistricts**
Areas that provide significant primitive recreational opportunities including but not limited to areas necessary to provide an effective visual and acoustical buffer zone on a continuing basis for significant primitive trails and in no case shall the Interim (P-7) Protection Subdistrict include less than the area within 100 feet of such trails.

B. **Land Use Standards Applicable To Interim (P-7) Protection Subdistricts**

1. **Uses Permitted Without Review And Approval Within Interim (P-7) Protection Subdistricts**
   The following uses shall be permitted without review and approval within Interim (P-7) Protection Subdistricts to the extent they are compatible with the resources or values protected:
   a. Primitive recreational uses, including fishing, hiking, hunting, wildlife study and photography, wild crop harvesting, trapping, horseback riding, tent and shelter camping, canoe portaging, cross country skiing, and snowshoeing;
   b. Motorized vehicular traffic on roads and trails other than significant primitive trails, motorized vehicular crossing of significant primitive trails on roads and other trails, and snowmobiling;
   c. Forest management activities except timber harvesting; fire prevention activities, wildlife management practices, and soil and water conservation practices;
   d. Mineral exploration to determine the nature or extent of mineral resources provided such exploration is accomplished by hand sampling, test boring, or other methods which create minimal disturbance;
   e. Surveying and other resource analysis; and
   f. Emergency operations conducted for the public health, safety or general welfare, such as resource protection, law enforcement, and search and rescue operations.

2. **Uses Permitted Upon Review And Approval Within Interim (P-7) Protection Subdistricts**
   The following uses shall be permitted upon review and approval, pursuant to Title 12, M.R.S.A., Section 685-B, within Interim (P-7) Protection Subdistricts:
   a. Principal and accessory structures or buildings and essential services as may be necessary for the exercise of uses listed in Section 221, VII, B, 1;
   b. Timber harvesting, agriculture; and
   c. Land management road construction.

VIII. **Interim (P-8) Protection Subdistricts And Land Use Standards**

A. **Areas To Be Included Within Interim (P-8) Protection Subdistricts**
Areas of significant value in conserving structures, sites, objects, phenomena, or natural systems of significant historic, archeological, esthetic, natural, scenic, or scientific value to the region or the state.

B. **Land Use Standards Applicable To Interim (P-8) Protection Subdistricts**

1. **Uses Permitted Without Review And Approval Within Interim (P-8) Protection Subdistricts**
   The following uses shall be permitted without review and approval within Interim (P-8) Protection Subdistricts to the extent they are compatible with resources or values protected:
   a. Primitive recreational uses, including fishing, hiking, hunting, wildlife study and photography, wild crop harvesting, trapping, horseback riding, tent and shelter camping, canoe portaging, cross country skiing, and snowshoeing;
   b. Motorized vehicular traffic on roads and trails, and snowmobiling;
   c. Forest management activities except timber harvesting; fire prevention activities, wildlife management practices, and soil and water conservation practices;
   d. Mineral exploration to determine the nature or extent of mineral resources provided such exploration is accomplished by hand sampling, test boring, or other methods which create minimal disturbance;
   e. Surveying and other resource analysis; and
   f. Emergency operations conducted for the public health, safety or general welfare, such as resource protection, law enforcement, and search and rescue operations.

2. **Uses Permitted Upon Review And Approval Within Interim (P-8) Protection Subdistricts**
   The following uses shall be permitted upon review and approval, pursuant to Title 12, M.R.S.A., Section 685-B, within Interim (P-8) Protection Subdistricts:
   a. Principal and accessory structures or buildings and essential services as may be necessary for the exercise of uses listed in Section 221, VIII, B, 1,

b. Timber harvesting, agriculture; and
c. Land management road construction.

IX. **Interim (P-9) Protection Subdistricts And Land Use Standards**

A. **Areas To Be Included Within Interim (P-9) Protection Subdistricts**
Areas which are inland or coastal wetlands as defined in Section 220.

B. **Land Use Standards Applicable To Interim (P-9) Protection Subdistricts**

1. **Uses Permitted Without Review And Approval Within Interim (P-9) Protection Subdistricts**
The following uses shall be permitted without review and approval within Interim (P-9) Protection Subdistricts to the extent they are compatible with the resources or values protected, provided such practices will not fill, drain, dredge or substantially alter the water table or water level:

a. Primitive recreational uses, including fishing, hiking, hunting, wildlife study and photography, wild crop harvesting, trapping, horseback riding, tent and shelter camping, canoe portaging, cross country skiing, and snowshoeing;
b. Motorized vehicular traffic on roads and trails, and snowmobiling;
c. Fire prevention activities, wildlife management practices, and soil and water conservation practices;
d. Mineral exploration to determine the nature or extent of mineral resources provided such exploration is accomplished by hand sampling, test boring, or other methods which create minimal disturbance;
e. Surveying and other resource analysis;
f. Emergency operations conducted for the public health, safety or general welfare, such as resource protection, law enforcement, and search and rescue operations;
g. Forest management activities provided timber harvesting is conducted in such a manner that slash is not left within the normal high water mark of nontidal standing and nontidal flowing waters; and
h. Construction of land management roads and minor land management road crossings of water courses as defined in Section 220 when in conformance with the standards listed below:
(1) Written notice of all land management road construction projects shall be given to the Commission prior to the commencement of on the ground operations. Such notice shall state the location, nature, and time period of such projects; and may be combined with the notice required by other sections of this chapter.
(2) Land management roads shall be located, constructed, and maintained in such a manner that minimal erosion hazard results. Adequate provision shall be made to prevent soil erosion and sedimentation of surface waters.

All land management roads shall be located, constructed and maintained in conformance with the erosion preventive provisions of "Permanent Logging Roads for Better Woodlot Management" published by the Division of State and Private Forestry, Forest Service Northeastern Area, U.S. Department of Agriculture in 1960 or subsequent revisions thereof.

(3) Additionally, all land management roads constructed shall conform with the following standards:

(a) Land Management road crossings of watercourses shall be kept to the minimum number necessary;

(b) Bridges or culverts of adequate size and design shall be provided for all land management road crossings of watercourses which are to be used when surface waters are unfrozen;

(c) Bottoms of culverts shall be installed at stream bed elevation; and

(d) All cut or fill banks and areas of exposed mineral soil in the immediate vicinity of watercourses shall be revegetated or otherwise stabilized.

(4 Whenever practicable land management road crossings of watercourses should be constructed during periods of low flow, normally July and August. It is especially important that construction of land management road crossings of watercourses be avoided between October 1 and November 30 on trout and salmon waters or their tributaries;

2. **Uses Permitted Upon Review And Approval Within Interim (P-9) Protection Subdistricts**

The following uses shall be permitted upon review and approval within Interim (P-9) Protection Subdistricts, pursuant to Title 12, M.R.S.A., Section 685-B:

a. Principal and accessory structures or buildings and essential services as may be necessary for the exercise of uses listed in Section 221, IX, B, 1, and the erection of docks;

b. Agriculture;

c. Any use substantially similar to those permitted in Section 221, IX, B, 1, but which would fill, drain, dredge or substantially alter the water table or water level; and

d. Land management road construction activities which exceed the limits of the standards for such use listed in Section 221, IX, B, 1, and major land management road crossings of watercourses as defined in Section 220 and other land management road crossings of watercourses which exceed the limits of the standards for such use listed in Section 221, IX, B, 1.

X. **Interim (P-10) Protection Subdistricts And Land Use Standards**

A. **Areas To Be Included Within Interim (P-10) Protection Subdistricts**

Areas within two hundred and fifty feet of the normal high water mark, measured as a horizontal distance landward from such high water mark, of nontidal bodies of standing water (lakes and ponds), nontidal flowing waters (rivers and streams), and stream channels, except where these areas are included within an Interim (P-3) Protection Subdistrict — all terms as defined in Section 220.

B. **Land Use Standards Applicable To Interim (P-10) Protection Subdistricts**

1. **Uses Permitted Without Review And Approval Within Interim (P-10) Protection Subdistricts**

The following uses shall be permitted without review and approval within Interim (P-10) Protection Subdistricts, to the extent they are compatible with the resources or value protected:

a. Primitive recreational uses, including fishing, hiking, hunting, wildlife study and photography, wild crop harvesting, trapping, horseback riding, tent and shelter camping, canoe portaging, cross country skiing, and snowshoeing;

b. Motorized vehicular traffic on roads and trails, and snowmobiling;

c. Fire prevention activities, wildlife management practices, and soil and water conservation practices;

d. Mineral exploration to determine the nature or extent of mineral resources provided such exploration is accomplished by hand sampling, test boring, or other methods which create minimal disturbance;

e. Surveying and other resource analysis;

f. Emergency operations conducted for the public health, safety or general welfare, such as resource protection, law enforcement, and search and rescue operations;

g. Agriculture when in conformance with the standards listed below:

(1) All spreading or disposal of manure shall be accomplished in conformance with the "Maine Guidelines for Manure and Manure Sludge Disposal on Land" published by the University of Maine and Maine Soil and Water Conservation Commission, on July 1972 or subsequent revisions thereof.

(2) No more than a one-half acre area of soil is tilled in any year.

(3) Agricultural practices shall be conducted in such manner to prevent soil erosion, sedimentation, and contamination or nutrient enrichment of surface waters.

h. Forest management activities including timber harvesting when in conformance with the standards listed below:

(1) Written notice of all timber harvesting operations shall be given to the Commission prior to the commencement of an on the ground operation. Such notice shall

state the location, nature, and time period of harvesting operations; and may be combined with the notice required by other sections of this chapter.

(2) Harvesting operations shall be conducted in such a manner that sufficient vegetation is retained along the banks of flowing waters, as defined in Section 220, to maintain shading of the surface waters thereby preventing substantial increases in water temperature which would be damaging to the existing aquatic biotic community.

(3) Skid trails, log yards, and other sites where the operation of logging machinery results in the exposure of substantial areas of mineral soil should be located such that an unscarified filter strip is retained between the exposed mineral soil and the normal high water mark of the water areas protected by these districts. The width of this strip should vary according to the average slope of the land as follows:

Average Slope of Land Between Exposed Mineral Soil and Normal High Water Mark (Percent)	Width of Strip Between Exposed Mineral Soil and Normal High Water Mark (Feet along Surface of the Ground)
0	25
10	45
20	65
30	85
40	105
50	125
60	145
70	165

(4) Harvesting operations shall be conducted in such a manner and at such a time that minimal soil disturbance results. Adequate provision shall be made to prevent soil erosion and sedimentation of surface waters.

i. Construction of land management roads and minor land management road crossings of watercourses as defined in Section 220 when in conformance with the standards listed below:

(1) Written notice of all land management road construction projects shall be given to the Commission prior to the commencement of on the ground operations. Such notice shall state the location, nature, and time period of such projects; and may be combined with the notice required by other sections of this Chapter.

(2) Land management roads shall be located, constructed, and maintained in such a manner that minimal

erosion hazard results. Adequate provision shall be made to prevent soil erosion and sedimentation of surface waters. All land management roads shall be located, constructed and maintained in conformance with the erosion preventive provisions of "Permanent Logging Roads for Better Woodlot Management" published by the Division of State and Private Forestry, Forest Service Northeastern Area, U.S. Department of Agriculture in 1960 or subsequent revisions thereof.

(3) Additionally, all land management roads constructed shall conform with the following standards:

(a) Land management road crossings of watercourses shall be kept to the minimum number necessary;

(b) Bridges or culverts of adequate size and design shall be provided for all land management road crossings of watercourses which are to be used when surface waters are unfrozen;

(c) Bottoms of culverts shall be installed at streambed elevation; and

(d) All cut or fill banks and areas of exposed mineral soil in the immediate vicinity of watercourses shall be revegetated or otherwise stabilized.

(4) Whenever practicable, land management road crossings of watercourses should be constructed during periods of low flow, normally July and August. It is especially important that construction of land management road crossings of watercourses be avoided between October 1 and November 30 on trout and salmon waters or their tributaries.

2. **Uses Permitted Upon Review And Approval Within Interim (P-10) Protection Subdistricts**

The following uses shall be permitted upon review and approval within Interim (P-10) Protection Subdistricts, pursuant to Title 12, M.R.S.A., Section 685-B:

a. Principal and accessory structures or buildings and essential services as may be necessary for the exercise of uses listed in Section 221, X, B, 1.

b. Agricultural practices which exceed the limits of the standards for such use listed in Section 221, X, B, 1, including the tilling of an area of soil in excess of one half acre in any year in conformance with a soil conservation plan;

c. Timber harvesting activities which exceed the limits of the standards for such use listed in Section 221, X, B, 1; and

d. Land management road construction activities which exceed the limits of the standards for such use listed in Section 221, X, B, 1, and land management road crossings of watercourses which exceed the limits of the standards for such use listed in Section 221, X, B, 1.

XI. **Interim (P-11) Protection Subdistricts And Land Use Standards**

A. **Areas To Be Included Within Interim (P-11) Protection Subdistricts**

Areas where development would jeopardize significant natural, recreational, or historic resources and which have special land management requirements which cannot adequately be accommodated within another Interim Protection Subdistrict.

B. **Land Use Standards Applicable To Interim (P-11) Protection Subdistricts**

1. **Uses Permitted Within Interim (P-11) Protection Subdistricts**

The uses to be permitted within Interim (P-11) Protection Subdistricts shall be determined by the Commission for each Interim (P-11) Protection Subdistrict. This determination shall be based on information presented at the public hearing held for the delineation of land use district boundaries for the area in question, and shall reflect the land management needs of the significant natural, recreational, or historic resources to be protected and shall be in accordance with the additional standards provided for in Title 12, M.R.S.A., 685-A, Subsection 3. The adopted schedule of uses for each specific type of Interim (P-11) Protection Subdistrict shall be filed in conjunction with the map(s) to which it applies at the Commission's office, the Bureau of Taxation's office and at the appropriate Registers of Deeds. Copies of said schedules of uses will be available upon request from the Commission.

XII. **Combinations Of Interim Protection Subdistricts And Land Use Standards**

A. **Areas To Be Included Within Combinations Of Interim Protection Subdistricts**

In certain cases an area may be suitable for inclusion in two or more protection subdistricts. In such cases, the area shall be designated as a combination of subdistricts.

B. **Land Use Standards Applicable To Combinations Of Interim Protection Subdistricts**

1. **Uses Permitted Within Combinations Of Interim Protection Subdistricts**

In areas designated as two or more protection subdistricts the uses permitted shall be the most protective combination of uses of the subdistricts included in the designation.

SECTION 222. INTERIM (M) MANAGEMENT DISTRICT BOUNDARY AND LAND USE STANDARDS

I. **Areas To Be Included Within Interim (M) Management Districts**

Areas appropriate for commercial forest product or agricultural uses.

II. **Land Use Standards Applicable To Interim (M) Management Districts**

A. **Uses Permitted Without Review And Approval Within Interim (M) Management Districts**

The following uses shall be permitted without review and ap-

Addendum to

STANDARDS FOR INTERIM LAND USE
DISTRICT BOUNDARIES AND
PERMITTED USES

P-2 - Section 221, II, B 2.

b. Roads and bridges, other than land management roads and bridges when there is no reasonable alternative except to cross this subdistrict and when in conformance with the following:

1. such proposals shall be consistent with the need to minimize flood damage, and

2. adequate drainage shall be provided to reduce exposure to flood hazards.

P-3 - Section 221, III, B. 2.

e. Roads and bridges, other than land management roads and bridges when such are required to cross waters protected by this subdistrict.

f. Single-family permanent or seasonal dwellings when the Commission finds that the proposed use:

1. will not unduly interfere with appropriate existing uses

2. is consistent with growth needs of the area and the growth policies of the Commission when consideration is given to

a. The existence of utilities and public services and the effect of the proposed use upon such, and

b. the relationship of the proposed use and site to existing development and growth patterns in the area of the proposed site.

3. will not cause unreasonable degradation of the quality of the affected body of water

4. will not unduly interfere with wildlife habitat

The development shall conform with the following standards:

1. A. All structures with the exception of docking or mooring structures shall be set back at least 75' from the normal high-water mark

2. B. A lot abutting a lake, pond, river, stream or tidal water shall have a minimum shore frontage of 100 feet, measured in a straight line between the points of intersection of the side lot lines with the shoreline at normal high water elevation.

P-8 - Section 221, VIII B. 2.

d. Principal and accessory buildings and structures and essential services as may be necessary for the exercise of the following uses:

(1) Permanent, seasonal or transient human habitation;

(2) Transportation, communications, and utilities; and

(3) Activities related to the maintenance or enhancement of the resource protected; when in conformance with the Standards listed below:

(1) a. All uses and structures shall be compatible with and not detract from the public value of the resource protected by the P-8 subdistrict.

P-10-Section 221. X.B.2.

e. Roads and bridges, other than land management roads and bridges when such are required to cross waters protected by this subdistrict.

f. Single-family permanent or seasonal dwellings when the Commission finds that the proposed use:

1. will not unduly interfere with appropriate existing uses.

2. is consistent with growth needs of the area and the growth policies of the Commission when consideration is given to

a. the existence of utilities and public services and the effect of the proposed use upon such and

b. the relationship of the proposed use and site to existing development and growth patterns in the area of the proposed site.

3. will not cause unreasonable degradation of the quality of the affected body of water.

4. will not unduly interfere with wildlife habitat

The development shall conform with the following standards:

1. All structures with the exception of docking and mooring structures shall be set back at least 75 feet from the normal high-water except for the following cases.

a. Where the P-10 subdistrict is based upon non-tidal flowing waters and stream channels that drain up to 100 acres all structures shall be set back at least 50 feet from the normal high-water mark.

g. non-permanent docking or mooring structures as defined in §220.

APPENDIX D

Existing Memorandum of Agreement

MEMORANDUM OF AGREEMENT

For the Promotion of

THE APPALACHIAN TRAILWAY

WHEREAS, The Appalachian Trail is recognized as a regional project involving specialized forms of recreational land use; and

WHEREAS, The National Park Service of the United States Department of the Interior and the Forest Service of the United States Department of Agriculture have entered into a mutual agreement for the protection and perpetuation of The Appalachian Trail on lands under their separate jurisdictions through the promotion of The Appalachian Trailway; and

WHEREAS, Certain portions of said Trail traverse public or private lands within the States of Maine, New Hampshire, Vermont, Massachusetts, Connecticut, New York, New Jersey, Pennsylvania, Maryland, Virginia, West Virginia, North Carolina, Tennessee, and Georgia; and

WHEREAS, These several States are committed to the policy of fostering and promoting recreation in the public interest; and the appropriate public agencies of these States and their political subdivisions, authorized to administer lands through which said Trail passes, have entered into agreements to cooperate with each other, with The Appalachian Trail Conference, and with the Federal Government in the protection and perpetuation of The Appalachian Trail; and

WHEREAS, It is the desire of the respective owners (corporations, partnerships, estates, individuals, etc.) owning or controlling the lands in Maine on which the Trail is located also to cooperate in the protection and perpetuation of The Appalachian Trail;

NOW, THEREFORE, The respective owners, whose accredited officials, agents, or representatives have affixed their signatures hereto, do hereby mutually agree to carry out the following program, looking toward the creation of The Appalachian Trailway, insofar as consistent with their established policies, and subject to appropriate legal authority:

I

To designate a zone extending wherever possible for a minimum width of one-quarter mile on each side of those portions of The Appalachian Trail which pass through areas under their separate jurisdictions, or to the paralleling boundaries of areas of lesser width, except in those localities where it descends into the main valleys, within which zone there will be constructed no new paralleling routes for the passage of public motorized transportation and no developments which in the judgment of the owner are incompatible with the existence of said zone; Provided that this agreement shall not prevent logging and the construction of logging roads not open to the general public,where The Trail crosses areas under management for the production of timber; Provided, further, that within 100 feet of The Trail no cutting primarily for timber production will take place.

II

To permit present maintenance and future development, insofar as consistent with established policies of the respective owners, their agents or representatives, of campsites with simple fireplaces, water, sanitation, and lean-to or other simple shelter facilities along or near the route of The Appalachian Trail wherever it passes through areas under their separate jurisdictions; the location of such facilities to be not more than a comfortable day's journey apart.

To cooperate with the Federal Government, as well as with the public agencies of the State of Maine and its political subdivisions, and with The Appalachian Trail Conference and The Maine Appalachian Trail Club, Incorporated, in protecting the scenic and recreational values of those portions of the Trailway which are not in public ownership.

****

It is further agreed and understood that this agreement may be terminated or modified in whole or in part upon six month's advance notice in writing given by any party to the others.

_____
(Owner)

_____ _____
(By) (Title)

_____ _____
(Date) (Place)

Maine State Park & Recreation Commission
(Agency)

_____ Director
(By) (Title)

_____ _____
(Date) (Place)

Maine Forest Service
(Agency)

_____ Forest Commissioner
(By) (Title)

_____ _____
(Date) (Place)

Maine Appalachian Trail Club, Inc.
(Agency)

_____ President
(By) (Title)

_____ _____
(Date) (Place)

APPENDIX E

Existing Lease

This Indenture made this day of A. D. 19 , by and between etc., parties of the first part, hereinafter called the Lessors, and the Maine Appalachian Trail Club Incorporated, party of the second part, hereinafter called the Lessee.

Witnesseth, the said Lessors in consideration of one dollar here in hand received, do hereby lease to said Lessee, subject to the conditions and agreements hereinafter set forth, the following described premises situated in .... (location of property) to wit; a strip of land ten (10) miles, more or less, and commencing at a point on the easterly line of Township C and running southwesterly..... being the same strip of land commonly called the Appalachian Trail, and also a lot of land one-fourth acre in size, more or less, located .....to be used as a campsite.

The above described premises are hereby leased for the construction and maintenance of a foot path or trail and campsite including a shelter, fireplace and toilet facilities for the members and guests of the Lessee. The said trail and campsite improvements to be constructed and maintained in accordance with the laws of the State of Maine and the rules and regulations of the Maine Forestry District.

Said Lessee agrees that it will not without written consent of the Lessors assign this lease nor sell or otherwise alienate any of the rights or privileges hereunder held by it; that it will use all reasonable precautions to guard against loss or damage from fires kindled or allowed to remain on said premises by its members or its guests; that it will hold said Lessors harmless from any claims for damage to person or property arising out of the construction and mainenance or use of said premises.

Said Lessors hereby reserve to themselves, their heirs, assigns, guests, lessees, operators and employees the right to pass over and to cross and recross said premises at any time in connection with the care and operating of their lands.

Said Lessors hereby agree that all growth cut within one hundred (100) feet from sides of the aforesaid premises shall be removed on a selective stand improvement basis.

All taxes on the foregoing premises and the improvements thereon shall be assessed and paid according to the laws of the State of Maine.

E - 1

To hold and enjoy said real estate and rights therein for the term of one year from 19 , and thereafter from year to year unless sooner cancelled by either party upon six months advance notice, in writing, given by any party to the other. Said Lessee also agrees that it will use said premises only for the purposes above stated; that it will at the termination of this lease peaceably and quietly quit the said premises and in consideration of this lease leave upon the premises as the property of the Lessors, their heirs and assigns without cost or liability on the part of the said Lessors, any and all buildings and improvements on said premises or hereafter placed upon the premises during the term of this lease. If the Lessee fails to perform in good faith any of its agreements herein set forth, then and in any such case, the Lessors or their heirs and assigns may at their election enter upon said leased premises and terminate and annul this lease so far as regards all future rights of said Lessee and repossess themselves of said premises and hold the same, and no failure of said Lessors or their heirs and assigns to enforce the forfeiture of this lease by reason of any breach by said Lessee of any of his agreements shall be construed as a waiver of the right to enforce such forfeiture for subsequent breach of the same or any other of said agreements.

IN WITNESS WHEREOF, the parties have hereunto set their hands interchangeably the day and year first above written.

APPENDIX F

Sample Purchase-Leaseback

LEASE USED IN SALE AND LEASE-BACK TRANSACTION[21]

This Lease, made the _____ day of _____ 19__, between _____, of _____, hereinafter referred to as lessor, and _____, a _____ corporation, hereinafter referred to as lessee;

Witnesseth: That in consideration of the mutual agreements herein contained, the parties do hereby covenant to and with each other as follows:

FIRST: **[Property description]** Lessor does hereby lease to lessee the following described real property and the buildings and improvements thereon in the City of _____, County of _____, State of _____, designated as _____, to-wit:

[*Here describe*]

[Term] To have and to hold the above described premises, together with the tenements, hereditaments, appurtenances and easements thereunto belonging, at the rental and upon the terms and conditions herein stated, for the term of _____ years, commencing with the first day of _____, 19__, and extending to and including the last day of _____, 19__.

21. The tax consequences under the Internal Revenue Code of a sale and lease-back transaction are considered in Century Electric Co. v. Commissioner of Internal Revenue, C.A.8th, 1951, 192 F.2d 155. This case and other decisions bearing on the tax problems involved in this type of transaction are discussed in an article by William L. Cary, Current Developments in Sales and Lease-Back Financing, 29 Texas L.R. 54.

SECOND: **[Rent]** Lessee does hereby agree to pay to lessor, as the rent of the leased premises, the sum of _____ dollars ($_____) on the first day of each calendar month during said term. Said payments shall be made by checks or drafts payable to _____, and mailed to _____ at _____, or by checks or drafts made payable to any other payee or mailed to any other address which lessor, or any successor in interest of lessor, may in writing designate. The rent for any fractional calendar month shall be prorated and paid on the first day of such fractional month.

THIRD: **[Taxes, utility charges, etc.]** Lessee agrees that it will pay all charges for electricity, water, gas, telephone and other utility services used on the leased premises. Lessee further agrees to pay all taxes and assessments upon the leased premises which are payable during the lease term. Taxes assessed during the term, but payable in whole or in installments after the termination of this lease, and assessments which are covered by bond, shall be adjusted and prorated and lessor shall pay the prorated share thereof for the period subsequent to the term, and lessee shall pay the prorated share thereof for the term of this lease.

FOURTH: **[Installation and removal of fixtures; painting, signs, etc.]** Lessee may place or install on and/or in the leased premises such fixtures and equipment as it shall deem desirable for the conduct of business therein, and may paint the building leased such colors as it elects. Lessee shall have the exclusive right to paint and erect or authorize signs in and over the leased premises and on the outside of the building thereon. Personal property, fixtures and equipment placed by lessee or any subtenant or any predecessor in interest on or in said premises (even though placed prior to the commencement of said term), shall not become a part of the realty, even if nailed or screwed or otherwise fastened to the premises, but shall retain their status as personalty and may be removed by lessee at any time. Lessee may obliterate any signs or color effects installed by it. Any damage caused the leased premises by the removal of such property shall be repaired by lessee at its expense.

FIFTH: **[Lessee's assumption of liability]** Lessee agrees that it will indemnify and save lessor harmless from any and all liability, damage, expense, cause of action, suits, claims, or judgments arising from injury to person or property on the leased premises, or upon the adjoining streets and sidewalks which arise out of the act, failure to act, or negligence of lessee, its agents or employees.

APPENDIX G

Sample Easements

Basic Easement Form

by

GRANT or RESERVATION

Deed—Granting easement

I, __1_____, __2_____ [a married *or* an unmarried] individual, of __3_____ *[address],* City of __4_____, County of __5_____, State of __6_____, owner of land described as __7_____, in consideration of __8_____ Dollars ($____), receipt of which is acknowledged, hereby grant, bargain, sell, and convey to __9_____ of __10_____ *[address],* City of __11_____, County of __12_____, State of __13_____, grantee, the following: __14_____ *[insert description of easement granted, including use permitted, limitations, location, width, and the like.]*

This easement is for the benefit of and appurtenant to that land, or any portion thereof, in the County of __15_____, State of __16_____, described as follows: __17_____.

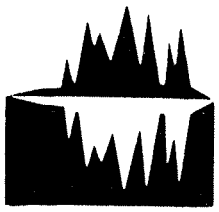
__18_____ *[If appropriate, add:* __19_____ *(Name),* __20_____ (husband *or* wife) of the above-described grantor, hereby releases all rights in the above described easement.]

In witness whereof, I have hereto set my hand this __21_____ day of __22_____, 19__23__.

[Signature]

[Acknowledgment]

(Negative Easement in Gross)



Maine Coast Heritage Trust

CONSERVATION EASEMENT

BUREAU OF STATE PARKS AND RECREATION

THIS INDENTURE made this _____ day of _____, _____, by and between _____ of _____, County of _____ and State of Maine, and _____ of said _____, hereinafter referred to as **GRANTORS** and the **STATE OF MAINE**, a governmental body having its principal office at Augusta, Kennebec County, State of Maine, hereinafter referred to as **GRANTEE**.

WITNESSETH AS FOLLOWS:

WHEREAS, by Act of the State of Maine Legislature, Title 33, Maine Revised Statutes, 1964, Section 667 and 668 as amended, conservation restrictions were recognized and defined; and

WHEREAS, by Act of the State of Maine Legislature, Title 12, Maine Revised Statutes, 1964, as amended, Section 602, (as amended by Chapter 460, Public Laws, 1973) providing for the establishment of The Bureau of Parks and Recreation of the Department of Conservation, The Bureau of Parks and Recreation, with the consent of the Governor and Council is authorized to acquire on behalf of the State of Maine, such lands or any interests therein lying within the bounds of the State of Maine, by purchase or gift and by eminent domain.

WHEREAS, the **GRANTORS** own *(description of property)* in said _____; and

WHEREAS, **GRANTORS** and **GRANTEE** recognize the attractive character of _____ and its important place in the scenic beauty of the area and acknowledge a common purpose to conserve

the scenic values of _____ and to prevent the use or development of the land in any manner which would conflict with the maintenance of such land in substantially its present natural, scenic, open and wooded condition; and

WHEREAS, the GRANTORS and GRANTEE have determined that it is in the public interest to acquire a Conservation Easement or Restriction over that part of _____ (hereinafter referred to as the "Property"), of which GRANTORS are the owners in fee, consisting of a certain lot or parcel of land located in said _____, described on Exhibit A attached hereto and hereby made a part hereof.

NOW, THEREFORE, for good and valuable consideration paid by the GRANTEE, receipt of which is hereby acknowledged by the GRANTORS, the GRANTORS do hereby freely give, grant, bargain, sell and convey unto the GRANTEE, its successors and assigns forever, for the benefit of the public, a Conservation Restriction or Easement in perpetuity over the Property consisting of the following: (1) The right to public view of the Property in substantially the Property's present natural, scenic, open and wooded condition; (2) the right of the Grantee in a reasonable manner and at reasonable times to enter and inspect and to enforce by injunction or proceedings at law or in equity, the covenants hereinafter set forth; and in furtherance of the foregoing affirmative rights, the following covenants by the GRANTORS on behalf of themselves, their heirs and assigns, shall run with and bind the Property in perpetuity.

1. The Property shall be used for nature study and conservation purposes only. No activities other than for nature study and conservation purposes and no buildings or structures of any nature or description shall be permitted on the Property. The Property shall be preserved in its natural condition, forever wild. Without limiting the foregoing, no recreational or camping activities shall be permitted on the Property, and no bridges, causeways or raods shall be permitted on the Property.

2. No alteration shall be made to the surface of the Property other than that caused by the forces of nature, except that there is expected and reserved by and retained in the GRANTORS, their heirs and assigns, the following rights to the extent permitted by law.

a. The right to post the property to control unauthorized use.

b. The right to clear and restore forest and natural cover that is damaged or disturbed by the forces of nature or by other causes.

c. The right to gather and remove dead wood.

d. The right to prune and, with the prior written consent of the Bureau of Parks and Recreation, the right to selectively thin trees.

TO HAVE AND TO HOLD the said Conservation Easement unto the said **GRANTEE**, its successors and assigns forever.

It is the intention of the parties hereto that the grant of easements and covenants herein shall be construed as "conservation restrictions" as the term is defined in Section 667 of Title 33 of the Revised Statutes of the State Of Maine, 1964, as amended, and that all of the provisions of Section 668 of said Title shall be binding upon the **GRANTORS**, their heirs and assigns, and upon the Property, and shall inure to the benefit of the **GRANTEE**, its successors and assigns. Should it be necessary or convenient at any time or times in the future in connection with any action of the **GRANTEE** to obtain the agreement or approval of the **GRANTORS**, their heirs and assigns, in connection with any matters relating to this Conservation Easement, the agreement or approval of the owner or owners of a majority interest in the Property, at the time concerned, shall be deemed to be the agreement or approval of all the owners of the Property.

In consideration for the rights herein granted, the **GRANTEE**, by its acceptance hereof, hereby agrees to undertake the protection of the Property in accordance with the conditions set forth aforesaid.

IN WITNESS WHEREOF, the said **GRANTORS** have hereunto set their hands and seals the day and year first above written.

(Signature, seal, and acknowledgment)

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STATE OF MAINE

COUNTY OF _____, ss. Date

Personally appeared _____ and _____ and acknowledged the above instrument to be their free act and deed.

Before me,

(Notary Public)

The above and foregoing Conservation Easement was authorized to be accepted by The Bureau of Parks and Recreation of the Department of Conservation of the State of Maine by the consent of the Governor and Council of the State of Maine, under Executive Order Number ____, *(date)*, and the Bureau of Parks and Recreation of the Department of Conservation of the State of Maine does hereby accept on behalf of the State of Maine, the above and foregoing Conservation Easement by and through The Bureau of Parks and Recreation.

Date:

/s/_____
Name, Director
Bureau of Parks and Recreation
Department of Conservation
State of Maine

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AFFIRMATIVE EASEMENT APPURTENANT

(In Perpetuity)

Grant of Right of Way for All Purposes

Indenture, made the _____ day of _____, 19__, between _____, Grantor, and _____, Grantee.

Whereas, the Grantor is seised of an estate in fee simple of a parcel of land described as [*description*], and marked on the plan annexed hereto, across which there runs a private road shown on the plan by the dotted lines between point A, where the road opens into _____ street, and point B, where it opens into _____ lane;

Whereas, the Grantee is seised in fee simple of another parcel of land near the Grantor's land, described as [*description*]; and

Whereas, the Grantor has agreed, in consideration of the sum of $_____, to grant to the Grantee an easement or right of way over the said private road:

Witnesseth, that in pursuance of the said agreement and in consideration of the sum of $_____ paid by the Grantee to the Grantor, the receipt whereof is hereby acknowledged, the Grantor hereby grants to the Grantee, his heirs and assigns:

Full and free right and liberty for him and them, his and their tenants, servants, visitors, and licensees, in common with all others having the like right, at all times hereafter, with or without vehicles of any description, for all purposes connected with the use and enjoyment of the said land of the Grantee, to pass and repass along the said private road for the purpose of going from the said _____ street to the said _____ lane, or vice versa.

To have and to hold the easement or right of way hereby granted unto the Grantee, his heirs and assigns, as appurtenant to the said land of the Grantee.

In witness whereof, the Grantor has hereunto set his hand and seal the day and year first above written.

[*Signature, seal, and acknowledgment*]

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Wisconsin Conservation Easement—Scenic

THIS INDENTURE made this .....day of....., 19...., by and between.....and ....., his wife, of..... County, Wisconsin, Grantor..; and the State of Wisconsin (Conservation Commission), Grantee.

WHEREAS, the Grantor..,.....the owner.. in fee simple of certain real estate which is in, near to, or adjacent to a Wisconsin Conservation Department project area now known as....., and located in..... County, Wisconsin, and

WHEREAS, because the said property is so located as to be a logical portion of the....., the Grantee, through its State Conservation Commission, desires to preserve insofar as reasonably is possible, the natural beauty of the..... Roadside, Lake, ..., and to prevent any unsightly de- Stream Area velopments that will tend to mar or detract from such natural beauty or to degrade the character of the project, or result in danger to travel, and to that end to exercise such reasonable controls over the lands within the restricted areas described hereinafter as may be necessary to accomplish such objectives,

NOW, THEREFORE,

WITNESSETH: For and in consideration of the sum of $.....paid by the Grantee to the Grantor.., receipt whereof is hereby acknowledged, and in consideration of the covenants hereinafter contained, the Grantor..hereby agree..to sell, transfer, grant, and convey to the Grantee, upon acceptance by said Grantee, an easement and right in perpetuity to any and all portions of the following described real estate, which acceptance must be made by the Grantee within..... months from the date hereof:

the location of said easement being shown on Exhibit "A" attached, hereto, and made a part hereof.

(1) The price to be paid to Grantor..by Grantee for such easement is $.....

(2) No building or premises shall be used and no building shall hereafter be erected or structurally altered except for one or more of the following uses:

(a)

(b) General farming, including farm buildings, except fur farms and farms operated for the disposal of garbage, rubbish, offal or sewage.

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(c) Telephone, telegraph or electric lines or pipes or pipe lines or microwave radio relay structures for the purpose of transmitting messages, heat, light or power.

(d) Uses incident to any of the above permitted uses, including accessory buildings.

(e) Any use existing on the premises at the time of execution of this easement. Existing commercial and industrial uses of lands and buildings may be continued, maintained and repaired, but may not be expanded nor shall any structural alteration be made.

(3) No dump of ashes, trash, sawdust or any unsightly or offensive material shall be placed upon such restricted area except as is incidental to the occupation and use of the land for normal agricultural or horticultural or .....purposes.

(4) No sign, billboard, outdoor advertising structure or advertisement of any kind shall be erected, displayed, placed or maintained upon or within the restricted area, except one sign of not more than 8 square feet in area to advertise the sale, hire or lease of property or the sale of any products produced upon the premises.

(5) No trees or shrubs shall be removed or destroyed on the land covered by this easement, except as may be incidental to the permitted uses.

(6) The grant of this easement does in no way grant to the public the right to enter such area for any purpose.

To have and to hold the said easement hereby granted, unto the Grantee forever.

A covenant is hereby made with the State of Wisconsin that the Grantor..hold..the premises described on the previous page included in the "restricted area" by good and perfect title; having good right and lawful authority to sell and convey the same, that the premises are free and clear from all liens and encumbrances whatsoever except as hereinafter set forth.

The Grantor.., for themselves, their heirs, executors, administrators, grantees, successors, and assigns, further covenant and agree that they will neither lease nor convey any other easement in any way affecting said "restricted area" without first securing the written permission of the State Conservation Commission of Wisconsin or its successor or successors.

And.....being the owner.. and holder..of.....certain.....lien.... .....which is.....
(Insert detail concerning lien)
against said premises, do..hereby join in and consent to said conveyance free of said lien.

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APPENDIX H

Maine Revised Statute - Title 33

STATE OF MAINE

Revised Statutes - Title 33

Section 667. Conservation restrictions; defined.

A conservation restriction means a right, whether or not stated in the form of a restriction, easement, covenant or condition, in any deed, will or other instrument executed by or on behalf of the owner of land or in any order of taking, appropriate to retaining land or water areas predominantly in their natural, scenic, open or wooded condition, or as suitable habitat for fish and wild life, to forbid or limit any or all::

1. Structures. Construction or placing of buildings, roads, signs, billboards or other advertising, utilities or other structures on or above the ground.

2. Landfill. Dumping or placing of soil or other substance or material as landfill, or dumping or placing of trash, waste or unsightly or offensive materials.

3. Vegetation. Removal or destruction of trees, shrubs or other vegetation.

4. Loam, gravel, etc. Excavation, dredging or removal of loam, peat, gravel, soil, rock or other material substance in such manner as to affect the surface.

5. Surface use. Surface use except for purposes permitting the land or water area to remain predominantly in its natural condition.

6. Acts detrimental to conservation. Activities detrimental to drainage, flood control, water conservation, erosion control or soil conservation, or fish and wild life habitat preservation or

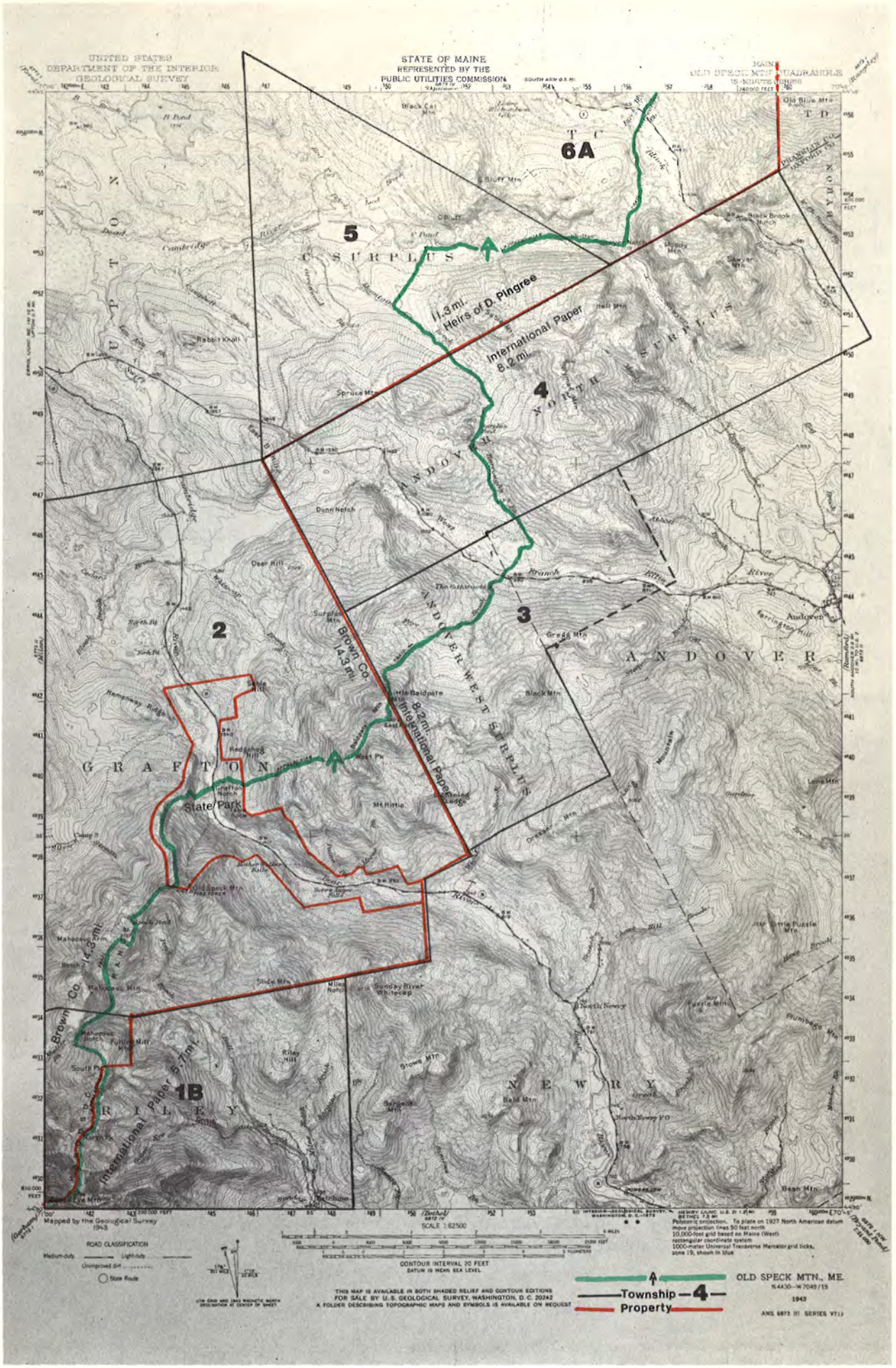
7. Other acts. Other acts or uses detrimental to such retention of land or water areas.

Section 668. Conservation restrictions; acquisition, effect recording and release of restrictions.

No conservation restriction as defined in section 667 held by any governmental body, whose purposes include conservation of land or water areas or of a particular such area, shall be unenforceable on account of lack of privity of estate or contract or lack of benefit to particular land or on account of the benefit being assignable or being assigned to any other governmental body with like purposes. All such restrictions shall be duly recorded and indexed in the registry of deeds for the county where the land lies so as to affect its title, in the manner of other conveyances of interests in land, and shall describe the land subject to said restrictions by adequate legal description or by reference to a recorded plan showing its boundaries.

Such conservation restrictions are interests in land and may be acquired by any governmental body which has power to acquire interests in land, in the same manner as it may acquire other interests in land. Such a restriction may be enforced by injunction or proceeding in equity, and shall entitle representatives of the holder of it to enter the land in a reasonable manner and at reasonable times to assure compliance. Such a restriction may be released, in whole or in part, by the holder for such consideration, if any, as the holder may determine, in the same manner as the holder may dispose of land or other interests in land, subject, to such conditions as may have been imposed at the time of creation of the restriction.

This section shall not be construed to imply that any restriction, easement, covenant or condition which does not have the benefit of this section shall, on account of any provision hereof, be unenforceable. Nothing in this section or section 667 shall diminish the powers granted by any general or special law to acquire by purchase, gift, eminent domain or otherwise and to use land for public purposes.


STATE OF MAINE
REPRESENTED BY THE
PUBLIC UTILITIES COMMISSION
UNITED STATES
DEPARTMENT OF THE INTERIOR
GEOLOGICAL SURVEY
6A
5
4
3
2
1B
1.5 mi.
Heirs of D. Pingree
International Paper
8.2 mi.
Brown Co.
14.3 mi.
International Paper
8.2 mi.
International Paper
5.7 mi.
Brown Co.
14.3 mi.
State Park
GRAFTON
ANDOVER
NEWRY
Township — 4 —
Property
OLD SPECK MTN., ME.
N4430—W7045/15
1943
Mapped by the Geological Survey
1943
SCALE 1:62500
CONTOUR INTERVAL 20 FEET
DATUM IS MEAN SEA LEVEL
ROAD CLASSIFICATION
THIS MAP IS AVAILABLE IN BOTH SHADED RELIEF AND CONTOUR EDITIONS
FOR SALE BY U.S. GEOLOGICAL SURVEY, WASHINGTON, D.C. 20242
A FOLDER DESCRIBING TOPOGRAPHIC MAPS AND SYMBOLS IS AVAILABLE ON REQUEST

APPENDIX I

Sample Ownership Map and Ownership Lists

ALPHABETICAL LIST OF OWNERS WITH TOTAL MILEAGE

(ABUTMENTS INCLUDED)

Adams Estate	3.8
E. Arsenault	.5
Brown Co.	26.4
J. Cassidy Timberlands	17.7
Central Maine Power	2.7
R. Delano	.5
Diamond International	31.4
T. L. Dickson	3.7
Ethyl Corp.	11.0
Daniel Field*	.6
Flagstaff Corp.	8.4
D. Forbus	.2
K. L. Fotter	.7
S. Frank	.1
G. & J. Garvin	.3
Great Northern	24.9
Bronson W. Griscom	3.2
S. Hobart	.6
E. Holbolm	.2
Hudson Pulp & Paper	14.5
J. M. Huber Corp.	5.8
International Paper Co.	30.0
Kennebec Pulp & Paper	4.3
H. Kesseli	.2
McCrillis Timberlands	3.9
Mitchel & Lindley	1.0
Oxford Ethyl	5.7
D. Pingree Heirs (Seven Islands)	11.3
Public Lots	4.9
L. Robbins	.2
St. Regis Paper	9.4
Scott Paper	34.6
Mark Shapiro**	.6
H. & B. Shaw	.4
Mildred Smith	.2
A. & H. Spohrer	.4
Clyde Thomas	.7
Timberlands, Inc.	1.8
H. Tomlin	.6

* Probably transfered to Hudson Pulp & Paper
** Probably transfered to Louise Gilman

OWNERS OF THE APPALACHIAN TRAIL FROM THE NEW HAMPSHIRE BORDER TO BAXTER PARK

Owner	Miles	Township & Map Code
Brown Co.	14.3	Riley (1A) (1B) Grafton (2) Interrupted by Grafton State Park
International Paper Company	5.7(abuts)	Riley (2)
International Paper Company	8.2	Andover West Surplus (3)
Heirs of D. Pingree (managed by Seven Islands)	11.3	C Surplus (5) TC (6A) (6B)
Brown Co.	12.1	TD (7)
International Paper Company	7.6	TE (8A) (8B)
Hudson Pulp & Paper Co.	2.7	Sandy River T2RI (9)
Daniel Field*	.6 (1/3 abuts)	Sandy River T2Rl (9)
Mark Shapiro**	.6 (1/3 abuts)	Sandy River T2Rl (9)
Bronson Griscom	3.2 (abuts)	Madrid (9)
Hudson Pulp & Paper Co.	11.8 (1/3 abuts)	Redington (10) Sandy River & Madrid (9)
Ethyl Corp.	1.1	Mt. Abraham (11)
Scott Paper	4.3 (abuts)	Mt. Abraham (11) Crockertown (12)

* probably transfered to Hudson Pulp & Paper
** probably transfered to Louise Gilman

Kennebec Pulp & Paper Co.	4.3 (abuts)	Mt. Abraham (11) Crockertown (12)
Scott Paper	9.8	Crockertown (12)
Public Lot	1.4	Wyman (13)
K. L. Fotter	.7 (abuts)	Wyman (13)
J. M. Huber Corp.	5.8	Wyman (13)
Flagstaff Corp.	8.4 (½ abuts)	Dead River (14)
Ethyl Corp.	6.2 (3/4 abuts)	Dead River (14)
Diamond Int.	.6	Dead River (14)
Public Lot	.8	Dead River (14)
Diamond Int.	2.3	Carrying Place (15)
Ethyl Corp.	.5	Carrying Place (15)
Timberlands, Inc.	1.1	Carrying Place (15)
Ethyl Corp.	1.6	Carrying Place (15)
Scott Paper	.7	Carrying Place (15)
T. L. Dickson Sr.	3.7	Carrying Place (15)
Scott Paper	5.2	Carrying Place (15) & Pierce Pond (16)
Central Maine Power	2.0	Bowtown (17)
Timberlands, Inc.	.7	T1R3 BKPWKR (18)
Central Maine Power	.7	T1R3 BKPWKR (18)
Mildred Smith	.2	T1R3 BKPWKR (18)
Oxford-Ethyl	5.7	The Forks (20A) (20B)
Scott Paper	6.2	Bald Mountain (21)
Public Lot	2.7	Bald Mountain (21)
Diamond Int.	4.5	Blanchard (22)

Clyde Thomas	.7	Blanchard (22)
Mitchel & Lindley	1.0	Blanchard (22)
L. Robbins	.2	Blanchard (22)
G. & J. Garvin	.3	Blanchard (22)
S. Hobart	.6	Blanchard (22)
H. Kesseli	.2	Monson (23)
International Paper	.8	Monson (23)
S. Frank	.1	Monson (23)
H. & B. Shaw	.4	Monson (23)
D. Forbus	.2	Monson (23)
E. Holmbolm	.2	Monson (23)
E. Arsenault	.5	Monson (23)
A. H. Spohrer	.4	Monson (23)
R. Delano	.5	Monson (23)
Scott Paper	2.5	Shirley (24)
Adams Estate managed by Prentiss & Carlisle	3.8	Elliotsville (25A)
H. Tomlin	.6	Elliostville (25B)
International Paper	2.7 (road)	Elliotsville (25B)
International Paper	4.2	Elliotsville (25B)
St. Regis	8.2	T7 R9 (26)
Diamond Int.	2.3	T7 R10 (27)
St. Regis	.2	T7 R10 (27)
Diamond Int.	3.4	T7 R10 (27)
St. Regis	1.0	T7 R10 (27)
Diamond Int.	3.0 (abuts)	T7 R10 (27)
Scott Paper	5.9	T7 R10 (27) & T-AR12 (28)

McCrillis Timberlands	3.9	T-A R12 (28)
J. Cassidy Timberlands	15.6 2.1 (road)	T-A R11 (29) & T-A R10 (30)
Great Northern	8.9	T1 R10 (31)
Diamond Int.	7.6	T1 R11 (32)
Great Northern	2.3	T2 R11 (33)
Diamond Int.	7.3	T2 R11 (33)
Great Northern	1.5	T2 R11 (33)
Diamond Int.	.4	T2 R11 (33)
Great Northern	12.2	T2 R11 (33) & T2 R10 (34)